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March 22, 2010

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BY HAND DELIVERY

Honorable Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20024

Re: Finance Docket No. 35360: *San Francisco Bay Railroad-Mare Island – Petition for Declaratory Order – Lennar Mare Island LLC, and Pursuant to 49 U.S.C. §11123 and 49 U.S.C. §1146.1(b)(1)(i) for Expedited Relief due to Unauthorized Cessation of Operations*

Dear Acting Secretary Quinlan:

Enclosed for filing in the above-referenced docket are an original and ten copies of the Reply of Lennar Mare Island LLC in Opposition to Petition for Emergency Service Order Pursuant to 49 U.S.C. § 11123, together with three disks containing electronic copies.

In accordance with 49 C.F.R. part 1104.2(d), please note that the original of this filing contains a colored map attached as an exhibit.

Please date stamp the extra copy of this filing and return it with our waiting messenger.

Respectfully,

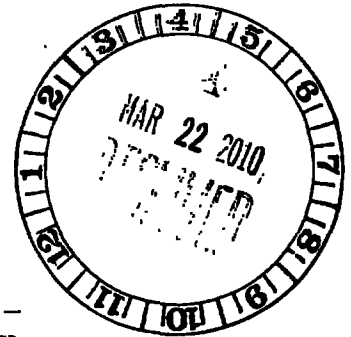
Karen E. Escalante

Enclosures

cc (with enclosures): John F. McHugh, Esq.
Thomas Sheaff, Esq.

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 35360



**SAN FRANCISCO BAY RAILROAD-MARE ISLAND –
PETITION FOR DECLARATORY ORDER – LENNAR
MARE ISLAND LLC, AND PURSUANT TO 49 U.S.C. § 11123
AND 49 C.F.R. § 1146.1 FOR EXPEDITED RELIEF
DUE TO UNAUTHORIZED CESSATION OF OPERATIONS**

**REPLY OF LENNAR MARE ISLAND LLC
IN OPPOSITION TO
PETITION FOR EMERGENCY SERVICE ORDER
PURSUANT TO 49 U.S.C. § 11123**

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March 22, 2010

CONTAINS COLOR IMAGES

**BEFORE THE
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**SAN FRANCISCO BAY RAILROAD-MARE ISLAND –
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**REPLY OF LENNAR MARE ISLAND LLC
IN OPPOSITION TO
PETITION FOR EMERGENCY SERVICE ORDER
PURSUANT TO 49 U.S.C. § 11123**

Lennar Mare Island, LLC ("LMI") replies to that portion of San Francisco Bay Railroad-Mare Island's ("SFBRR's") "Petition for Declaratory Order" and for "Expedited Relief Due to Unauthorized Cessation of Operations" that purports to seek emergency relief pursuant to 49 U.S.C. § 11123. The Board should deny the forced access relief that SFBRR seeks, and defer further consideration of SFBRR's Petition until after LMI has submitted its reply to SFBRR's Petition for Declaratory Order on April 5, 2010.

The emergency relief requested by SFBRR is unjustified for several reasons.¹

SFBRR's request for forced access covering rail trackage on Mare Island calls for the Board to exercise regulatory jurisdiction where it has never been established, and where the issue of the Board's jurisdiction was raised for the first time in SFBRR's own petition for declaratory order, to which SFBRR will be responding in April. Equally important, such relief is not necessary to address any substantial service failure, given the small (and indeed entirely speculative) volume of railcars that SFBRR might conceivably deliver in the near term and the fact that LMI has in any event already arranged for alternate service. Finally, any forced access order would interfere in significant ways with the ongoing transformation of Mare Island from a military base into a mixed-use civilian community as part of the City of Vallejo.²

BACKGROUND

This dispute concerns railroad trackage located in a former U.S. Navy Shipyard on Mare Island in Vallejo, California. That trackage is owned by LMI, which has extensive obligations to the City of Vallejo and others as the Master Developer of the

¹ LMI's Reply is supported by the verified statements of Thomas Sheaff of LMI (Sheaff V.S., Exhibit A hereto); Randolph V. Peterson, Manager of Mare Island Rail Service (Peterson V.S., Exhibit B hereto); and Sandy Franger, VP of Contracts for RailAmerica Inc. and its subsidiary California Northern Railroad Company (Franger V.S., Exhibit C hereto).

² If the Board nonetheless were to enter any service order, SFBRR acknowledges that all of the terms of SFBRR's access would require further Board proceedings if the parties could not reach agreement. Pet., p. 29. LMI reserves the right to contest the terms that SFBRR proposes. LMI notes that the terms SFBRR appears to be contemplating, based on discussion in its Petition and previous discussions with LMI, would conflict with LMI's needs and the future redevelopment of Mare Island. Sheaff V.S., ¶¶ 24-26, 34-35. See also pages 21-24, below.

former-Shipyards, which is in the midst of a transformation from a military installation into a vibrant mixed-use civilian community that will be part of the City of Vallejo.

The Mare Island trackage over which SFBRR seeks to operate was originally operated by the U.S. Navy's own switching railroad, and until last fall the Board had never granted any carrier authority to operate over this trackage, whether by exemption or otherwise. Although for several years some switching operations were carried out on the Island, all such operations ceased in early 2008.

In September 2009, SFBRR filed a Verified Notice of Exemption in Finance Docket No. 35304, purporting to seek regulatory authority to operate the trackage on Mare Island as a common carrier. That Notice contained false and misleading information by failing to disclose that LMI was the owner of the trackage and falsely implying that SFBRR did not need any agreement with LMI in order to carry out operations on the Island. LMI has petitioned the Board to revoke SFBRR's exemption as it relates to LMI-owned trackage on Mare Island. *See* LMI's Petition to Revoke Exemption, Finance Docket No. 35304 (filed Mar. 19, 2010).

LMI explored with SFBRR whether an agreement could be reached that would provide SFBRR with access to LMI-owned trackage for purposes of conducting rail operations, but LMI concluded that SFBRR's demands were incompatible with LMI's obligations with respect to the ongoing redevelopment of Mare Island. As a result, SFBRR has no contract or other rights to use the trackage on Mare Island for any purpose (with one exception relating to Alstom, discussed below). SFBRR now seeks to have the Board grant an order forcing LMI to allow SFBRR to operate anywhere it wishes on the Island at terms to be set by the Board. LMI opposes SFBRR's request.

ARGUMENT

SFBRR seeks two separate forms of relief from the Board. First, it seeks a declaratory order stating that, "as successor to the CFNR" SFBRR has the "right and obligation to provide common carrier rail service on the tracks located on ... LMI's property" and, "absent an agreement between LMI and [SFBRR] the Board may impose terms on LMI allowing [SFBRR] to operate common carrier rail service to shippers on about 2.5 miles of railroad located on land owned by LMI." (Pet., pp. 2, 13, 30.)

Second, SFBRR seeks an emergency service order pursuant to 49 C.F.R. § 1146 and 49 U.S.C. § 11123. (Pet., pp. 2, 30.)³

LMI's response to SFBRR's request for a declaratory order is due on April 5, 2010, 20 days from the date of filing of the Petition, *see* 49 C.F.R. § 1104.13, and LMI will submit its reply on that date. Pursuant to 49 C.F.R. § 1146.1(b)(2), however, "the incumbent carrier" must respond to a petition seeking expedited relief under Section 11123 within five business days. LMI submits that this provision requiring an expedited reply does not apply in the present circumstances, for at least two reasons:

³ SFBRR's Petition is captioned as a request for an order under 49 U.S.C. § 11123, which governs emergency service orders, and explicitly requests (at pp. 2, 30) relief pursuant to that provision and the regulation (49 C.F.R. § 1146) that implements it. At various points, however, SFBRR's Petition also mentions other statutory and regulatory provisions, none of which appear to have any bearing on the relief SFBRR requests, including 49 U.S.C. § 11102 (cited at p. 2; provision addresses use of terminal facilities); 49 U.S.C. § 10907 (cited at pp. 13 n.2, 27; provision addresses forced sale of feeder lines); and 49 C.F.R. § 1147.1 (cited at pp. 13; 20, 25; provision addresses procedures for seeking competitive access relief under 49 U.S.C. §§ 11102 and 10705). Notwithstanding these stray citations (and given that SFBRR does not attempt to establish any of the elements required for relief under these provisions), LMI understands SFBRR to be requesting only an emergency service order pursuant to Section 11123, and responds accordingly.

- LMI, the property owner against whom SFBRR is seeking relief, is not an “incumbent carrier” within the meaning of Section 1146.1(b)(2). As SFBRR acknowledges, LMI is “not a rail common carrier” (Pet., pp. 12, 14, 28.).
- Moreover, there is no other “incumbent carrier” in this case. Section 11123 – and thus the expedited reply requirement of Section 1146.1(b)(2) – necessarily only applies where the service that has allegedly been interrupted or is being provided inadequately is common carrier rail service subject to the Board’s jurisdiction. Here, however, the Board’s jurisdiction hinges on the outcome of SFBRR’s petition for declaratory order, to which SFBRR is not required to respond until April 5.

LMI nonetheless submits this reply demonstrating that SFBRR’s request for emergency service relief should be denied.⁴

First, SFBRR incorrectly portrays itself as seeking to overcome an interruption of *its own* common carrier obligation to serve Mare Island. In fact, SFBRR has no such obligation, either as successor to California Northern or as the recipient of Board authority arising from the exemption it filed in Finance Docket No. 35304.

Second, even if the trackage on Mare Island were subject to Board jurisdiction, there is no emergency service interruption at issue here. LMI has made arrangements for an alternative provider to provide switching services for all businesses on Mare Island that are connected to operational rail trackage. That option forecloses the forced access

⁴ SFBRR’s Section 11123 petition appears in addition to be subject to dismissal for failure to comply with 49 C.F.R. § 1146.1(b)(iv), which requires certification of service on the “Federal Railroad Administration.”

SFBRR seeks. In any event, the volume of rail traffic potentially generated by these businesses in the near term is at most very small – and is in any event entirely speculative – and certainly does not rise to the level of substantiality required by Section 11123.

Third, SFBRR's proposed operations are inconsistent with – and would significantly disrupt – the ongoing multi-year process of redeveloping Mare Island from a U.S. Navy shipyard into a civilian mixed-use community. It would be inappropriate for the Board to intrude into this process by imposing the extraordinary remedy of forced access by an adversarial party who is a stranger to the process.

These defects amply demonstrate that the Board should deny SFBRR's requested service order under Section 11123. In any event, the Board should not consider granting such an order until it considers, in the light of LMI's reply due April 5, whether SFBRR (or anyone else) has a common carrier obligation with respect to trackage on Mare Island.⁵

I. SFBRR'S PETITION MISREPRESENTS KEY FACTS CONCERNING THE REGULATORY STATUS OF THE MARE ISLAND TRackage AND SFBRR'S STATUS AS "SUCCESSOR" TO CALIFORNIA NORTHERN

SFBRR's request for an alternative service order gets the cart before the horse. A predicate to any such order is a determination that the Board has jurisdiction over the trackage to which access is sought. The Board's jurisdiction over Mare Island rail trackage has never been established, and is the subject of SFBRR's separate petition for declaratory order, to which LMI will be responding in April.

⁵ To the extent necessary, LMI requests an extension of its filing deadline under 49 C.F.R. 1146.1(b)(2) until April 5, 2010.

Against that backdrop, a key underpinning of SFBRR's request for an emergency service order is its suggestion that California Northern was licensed by the Board to provide common carrier service on Mare Island, that SFBRR is merely seeking to exercise that authority as California Northern's "successor," and that LMI has allegedly prevented SFBRR from fulfilling that obligation. These assertions misrepresent the facts, and the Board should not take action based on them. LMI will address in more detail on April 5 the reasons why SFBRR could not have a common carrier obligation to operate trackage on Mare Island. Nonetheless, the Board should understand that there is no basis for SFBRR's assertions that California Northern or any other carrier received Board authority to operate the trackage on Mare Island as common carrier trackage, or that SFBRR acquired any rights or obligations from California Northern, whether as "successor" or otherwise.

A. Neither California Northern nor any Other Carrier Before It Ever Obtained Board Authority to Operate the Mare Island Trackage

First, until SFBRR sought Board authority to operate the rail trackage on Mare Island, neither California Northern nor any other railroad had ever obtained such authority. This trackage historically was operated by the U.S. Navy to serve the Navy's own needs at its Mare Island Shipyard. Pet., p. 6; Sheaff V.S., ¶ 10. Contrary to SFBRR's Wikipedia-based speculation (Pet., pp. 6-7; Gavrich Dec., ¶ 9), neither the trackage on Mare Island, nor the segment connecting Mare Island to Flosden Acres, was ever operated by Southern Pacific ("SP"), as a common carrier or otherwise. The only line in the vicinity ever operated by Southern Pacific was SP's Vallejo Branch, with runs from Napa Junction to the City of Vallejo and connects with the former-Navy railroad at Flosden Acres. Sheaff V.S., ¶ 14.

In fact, the first rail operations on Mare Island that were conducted by any entity other than the U.S. Navy were those of California Northern. California Northern had leased SP's Vallejo Branch in 1993, and began operating on the Navy's trackage between Flosden Acres and Mare Island pursuant to a license granted by the U.S. Navy (*not SP*) in 1994. Sheaff V.S., ¶ 12 & Exh. 1. That license expired in 1998, and California Northern's operations on Mare Island ceased altogether in early 2008. *Id.*, ¶ 17.

California Northern did not seek any Board authority for its temporary operations on Mare Island. Franger V.S., ¶ 8; Sheaff V.S. ¶ 18. SFBRR suggests otherwise by citing a Notice of Exemption filed by California Northern's predecessor, CFNR Operating Company, Inc., in 2002, when it took over operation of California Northern from Parksierra Corp. Pet., p. 7 & Exh. D. However, that Notice, and CFNR's resulting Board authority, quite plainly *did not* cover the line from Flosden Acres to Mare Island. CFNR's Notice listed the "Vallejo Branch," but it did not list the trackage between Flosden Acres and Mare Island. CFNR Notice of Exemption, Finance Docket No. 34199 (filed Apr. 23, 2002), pp. 3-6 (Exh. D to SFBRR's Petition); *see also* Franger V.S., ¶ 8.

SFBRR suggests that CFNR's Notice may have encompassed the Mare Island trackage because that trackage was a "branch line appended" to the trackage covered by the Notice, but this is incorrect. (Pet., p. 7.) However, the reference to "any branch lines" at page 5 of CFNR's Notice (Exh. D to SFBRR's Petition) was merely a recital of the language of the regulation to which CFNR was responding when it listed, among

other branches, the Vallejo Branch.⁶ The Board's regulation – 49 C.F.R. § 1150.33 – required CFNR to identify “[t]he mile-posts of the subject property, including any branch lines” for which authority was being sought. The resulting exemption covered that trackage, but did not magically expand to cover, in addition, “all branch lines appended thereto” as SFBRR suggests. As the Board has noted, the Notice's milepost designations govern the scope of the exemption. *See Minnesota N. R.R., Inc. – Exemption – Acquisition & Operation of Rail Line & Incidental Trackage Rights from Burlington N. R.R.*, STB Finance Docket No. 33315 (served Aug. 5, 1997) (“milepost descriptions ... offer a more precise description of the lines being transferred”). The map appended to CFNR's Notice of Exemption could not have broadened this authority. It showed many lines in addition to those specific lines enumerated in the Notice.

Confirming that California Northern neither sought nor obtained regulatory authority to operate the Mare Island trackage, California Northern did not seek Board authority to terminate its operations in 2008. California Northern specifically informed LMI that its operations on Mare Island were “not common carrier operations” and that no Board authority was required for California Northern to discontinue them. *See Sheaff V.S.*, ¶ 18 & Exh. 2 (February 6, 2008 letter from California Northern to LMI).

B. SFBRR Is Not California Northern's “Successor” and Obtained No Rights or Obligations from California Northern

Whatever rights or obligations California Northern may have had with respect to the Mare Island trackage (and LMI submits there were none), SFBRR did not inherit any

⁶ Mr. Gavrich acknowledges that the line between Flosden Acres and Mare Island is not the same as the Vallejo Branch. Gavrich Dec., ¶ 2 (Alstom spur connects to a “line of railroad which *is connected to* the Vallejo Branch” of the CFNR).

such rights or obligations from California Northern. As California Northern explains, SFBRR is *not* California Northern's successor. Nor does SFBRR have any other basis for asserting a present common carrier *obligation* to provide service on Mare Island. Franger V.S., ¶¶ 4-5. SFBRR's bare *desire* to conduct common carrier rail operations on Mare Island does not suffice to give it the right or obligation to do so.

1. **SFBRR Obtained No Rights from California Northern**

SFBRR's Petition states that SFBRR acquired "rights ... from CFNR" relating to the Mare Island trackage (Pet., p. 1); that SFBRR has the authority to provide service on that trackage "as a successor in interest to the CFNR" (*id.*, p. 13); and that California Northern "designated" SFBRR to provide service on the Mare Island trackage (*id.*, p. 29). Each of these statements is false. SFBRR is not in any sense a "successor" to California Northern. It acquired no assets, property rights, or contractual rights from California Northern relating to the Mare Island Trackage, and California Northern did not designate SFBRR or anyone else to provide rail service on that trackage. Franger V.S., ¶ 4.

California Northern confirms that SFBRR is not in any sense its successor, and that it did not in any way "designate" SFBRR as the operator of the Mare Island trackage. To the contrary, California Northern's only relationship with SFBRR is an interchange agreement between the two carriers. Such an arrangement does not make SFBRR California Northern's successor any more than any other entity with which California Northern interchanges freight cars. Indeed, California Northern would be willing to interchange cars with any qualified operator of the Mare Island trackage. Franger V.S., ¶ 7.

If one parses carefully the actual facts alleged in SFBRR's Petition, the falsity of SFBRR's assertions is all the more apparent. Based on SFBRR's own factual assertions,

the only thing SFBRR “acquired” from California Northern was its “blessing” to SFBRR’s proposed operation, in the sense that California Northern was not opposed to SFBRR operating on that trackage. Pet., p. 8 (“CFNR’s response to the request was to allow Petitioner to assume responsibility”); Gavrich Dec., ¶ 2 (“CFNR had limited interest in serving [Alstom], and had urged them to find their own operator to connect their facility to the junction at Flosden”); *id.*, ¶ 8 (California Northern “not only had no objection to our filing, but also were happy [sic] to allow us to serve the branch and generate traffic on the line.”).

SFBRR’s Notice of Exemption in Finance Docket No. 35304 provides further confirmation that there is no basis for SFBRR’s assertion that it succeeded to rights or obligations of California Northern. Board regulations would have required SFBRR to identify California Northern as the “railroad *transferring the subject property*” (49 C.F.R. § 1150.33(e)(1)) (emphasis added), but SFBRR’s notice instead merely described California Northern as the “common carrier which last provided service on the track.” SFBRR Notice of Exemption, Finance Docket No. 35304 (filed Sept. 28, 2009).

SFBRR’s mere desire to operate on Mare Island, where California Northern once operated, does not come close to making SFBRR California Northern’s successor. It is black letter law that an entity is a successor – or successor in interest – to the legal rights or obligations of another only when that entity acquires rights or obligations “through amalgamation, consolidation, or other assumption of interests.” BLACK’S LAW DICTIONARY (8th ed. 2004). “Generally, one of the fundamental requirements for consideration of the imposition of successor liability is a merger or transfer of assets between the predecessor and successor companies.” *Coffman v. Chugach Support Servs.*,

Inc., 411 F.3d 1231, 1237 (11th Cir. 2005). As a result, no issue of “successorship” is even raised when there has not been a merger or transfer of assets between two companies. *Id.* And even when there is a transfer of assets – and no such transfer has occurred here – “[a] party simply acquiring property of a firm in an arm’s length transaction, and taking up its business activity, does not become the selling firm’s ‘successor in interest.’” *Holland v. Williams Mountain Coal Co.*, 256 F.3d 819, 821-822 (D.C. Cir. 2001) (explaining that *Black’s Law Dictionary* provides the standard “corporate law definition” of a successor-in-interest, which “is a successor to the *wealth* of the predecessor, typically through a corporate reorganization.”).

The Board has consistently recognized that, successorship involves mergers or the acquisition of a firm’s assets and liabilities in bankruptcy. *See, e.g., Port Orford Cedar Products Co. v. Akron & Barberton Belt Railroad Co.*, 218 I.C.C. 329, 330 (1936) (corporation that acquired all the assets and liabilities of original complainant is successor-in-interest properly entitled to any reparations due to complainant); *The Cincinnati, New Orleans & Texas Pacific Ry. v. Akron, Canton, & Youngstown R.R.*, 353 I.C.C. 165, 173 (1976) (finding that Conrail was the successor-in-interest to the bankrupt defendant railroads because it acquired all of the railroad equipment, yards, right-of-way, and other assets of the bankrupt railroads); *Georgia Great Southern Division, South Carolina Central Railroad Co., Inc. – Abandonment & Discontinuance Exemption – Between Albany & Dawson, In Terrell, Lee, & Dougherty Counties, GA*, STB Docket No. AB-389 (Sub-No. 1X) (served May 16, 2003), pp. 2, 5 (GSWR was “successor in interest” to SCCR where “GSWR, to ensure that it held the exclusive right to reactivate rail service on this line, ... acquired from SCCR any and all rights SCCR might have had in this line

at that time"); *Bar Ale Bar Ale, Inc. v. California Northern R.R. & Southern Pacific Transportation Co.*, STB Finance Docket No. 32821 (served July 20, 2001), p. 1 & n.1 (describing Union Pacific as the "successor in interest to SP" because "UP has acquired SP's interest in the line pursuant to the Board's decision in *Union Pacific/Southern Pacific Merger*, 1 S.T.B. 233 (1996)"). SFBRR, of course, has not acquired any interests of California Northern by merger, acquisition, assignment, or otherwise, and therefore has not succeeded to any rights or obligations of California Northern.

2. SFBRR Obtained No Rights from the Board's Exemption in Finance Docket No. 35304

SFBRR may imagine that the exemption issued by the Board in Finance Docket No. 35304 conveyed to SFBRR some measure of rights or obligations with respect to the Mare Island Trackage. This notion is hinted at by Mr. Gavrich when he notes that "our Notice was directed at acquiring CFNR's rights and obligations, whatever they were." Gavrich Dec., ¶ 9. Any such belief is unfounded.

First, SFBRR is not even a valid carrier with respect to LMI-owned trackage. Its notice of exemption was false and misleading, and is properly treated as void *ab initio*, as set forth in LMI's Petition to Revoke filed in Finance Docket No. 35304 on March 19, 2010.⁷

Second, and more fundamentally, the law is very clear that the Board's grant of authority is merely permissive, and provides the "carrier" with no rights or obligations

⁷ As explained in LMI's Petition to Revoke, LMI did not file sooner because it first wished to determine whether an acceptable agreement could be reached with SFBRR to grant it access to LMI-owned trackage, and then deferred filing in order to accommodate the parties' participation in the Board's informal dispute resolution process, which SFBRR chose to terminate by filing its Petition herein.

unless and until that carrier obtains rights from the owner of the line to conduct operations, and then also uses those rights to conduct operations. *See James Riffin -- Petition for Declaratory Order*, STB Finance Docket No. 35245 (served Sept. 15, 2009) (“Riffin claims that whether legal title has passed is irrelevant because he has Board authority to operate the line. But that authorization is permissive, not mandatory, and did not give him a legal property interest in the line. Riffin would have to acquire some suitable legal interest that would give him the ability to exercise his authority and hold himself out as a common carrier before he could qualify as a rail carrier.”); *see also, e.g., Lackawanna County Railroad Authority – Acquisition Exemption – F&L Realty, Inc.*, STB Finance Docket No. 33905 (served Oct. 22, 2001) (“The question of whether a party (or parties) have regulatory authority to operate over a particular segment of track is different from the question of whether that party (or parties) have the necessary property interest or contractual right under applicable agreements to exercise that authority.”).

SFBRR has done neither: it has no rights or obligations as “successor” to Cal Northern; it has no agreement of any sort with LMI (except for the rights allowing it to serve Alstom on 300 yards of track near the Causeway),⁸ and it has not operated on Marc Island except to serve Alstom, as it acknowledges. Gavrich Dec., ¶¶ 10-11, 14-15; *see also* Sheaff V.S., ¶¶ 21-24.

⁸ SFBRR’s service to Alstom does not entail common carrier operations. SFBRR provides service to only a single customer – Alstom – using rights granted by Alstom to operate on Alstom’s spur (the first 300 yards of trackage on Marc Island), which Alstom was able to grant because its lease from LMI permits it to arrange for private switching service for deliveries of railcars on its spur. Sheaff V.S., ¶¶ 20-23, 27.

II. THERE IS NO "SERVICE EMERGENCY" REQUIRING BOARD ACTION

There is no emergency service problem here, which is a predicate to Board action under Section 11123. A petitioner must show a "substantial, measurable service deterioration or other demonstrated inadequacy in rail service provided by the incumbent carrier." 49 C.F.R. § 1146.1(a); *see also Roseburg Forest Products Co., et al. – Alternative Rail Service – Central Oregon & Pacific R.R.*, STB Finance Docket No. 35175, (served Mar. 4, 2009), p. 5. Even if one assumes the Mare Island trackage is within the Board's jurisdiction, there is no "substantial ... inadequacy" here for at least two reasons: (a) LMI has arranged for a qualified switching operator to provide service to businesses on Mare Island, and (b), even if that alternative were deemed inadequate, SFBRR has offered no evidence that potential rail customers would generate significant volumes of rail traffic in the foreseeable future.

A. No Potential Rail Customer Faces a Service Inadequacy Justifying an Alternative Service Order

First, as SFBRR acknowledges, no customer on Mare Island has received *any rail service* since 2008, with the sole exception of Alstom. (Pet., pp. 9-10, 15-16.) SFBRR is serving Alstom today, and there is no threat that such service will be interrupted by LMI. As Thomas Sheaff of LMI explains, Alstom operates at a location 300 yards from the Mare Island Causeway, and its lease gives it the right to authorize a railroad to deliver and receive cars using Alstom's spur. LMI has no objection to SFBRR delivering

railcars to Alstom using these rights. Sheaff V.S., ¶ 22. Indeed, SFBRR acknowledges that LMI is not standing in the way of its service to Alstom.⁹

Second, SFBRR contends that only one potential customer has made a “demand” for rail service since 2008. (Pet., pp. 9-10, 16.) To the extent SFBRR is referring to Alstom, of course, there is no service issue. To the extent SFBRR is referring to XKT Engineering (*see* Gavrich Dec., ¶ 11), there is likewise no service emergency. As Mr. Sheaff explains, LMI has contracted with a qualified railroad switching operator – T&O Railroad Company, doing business as Mare Island Rail Service (“MIRS”) – to provide businesses on Mare Island with switching service to the extent compatible with the ongoing redevelopment of the Mare Island Shipyard. Sheaff V.S., ¶ 28; *see also* Peterson V.S., ¶ 3. As Mr. Peterson of MIRS explains (Peterson V.S. at ¶¶ 4-5), MIRS has for some time been prepared to begin moving cars to XKT and other businesses on the Island, if SFBRR would deliver those cars to the Island (at the west end of the Causeway) so that MIRS could reach them. MIRS is fully capable of providing such switching service *immediately*. Peterson V.S., ¶ 4. LMI has specifically authorized the delivery of cars to XKT. Sheaff V.S., ¶ 29. So far as LMI and MIRS are aware, the only reason XKT has not *already* begun to receive railcars at its Mare Island facility is that SFBRR has thus far not been willing to deliver cars to Mare Island for movement to XKT by MIRS. Peterson V.S., ¶ 6; Sheaff V.S., ¶ 29. As the Board has held, the availability of other rail options precludes the imposition of an alternative service order. *Roseburg Forest Products*, p. 8.

⁹ See Pet., p. 8 (asserting that SFBRR has been blocked “as to all shippers but Alstom”).

Third, MIRS is also prepared to begin service immediately to other businesses on Mare Island, provided that doing so is not foreclosed by the ongoing redevelopment of Mare Island. Peterson V.S., ¶¶ 4-5. MIRS is thus prepared to provide efficient service to all of the potential rail customers identified in SFBRR's Petition (in addition to XKT): Alamillo Rebar, Alco Iron & Metal ("Alco"), Cooper Crane, CS Marine, Earthquake Protection Systems ("EPS"), and Jeffco/ABC. At the moment there is no obstacle (other than SFBRR's unwillingness to deliver cars) to MIRS's providing all but two of these businesses with switching service. Peterson V.S., ¶ 5; Sheaff V.S., ¶ 30.

For two of these businesses – Alco and EPS – neither MIRS nor SFBRR could provide service until the completion of ongoing environmental remediation projects affecting the trackage that serves these businesses' locations. Sheaff V.S., ¶¶ 30-31. As shown on the map accompanying Mr. Sheaff's verified statement,¹⁰ a portion of the trackage needed to reach Alco and EPS has been physically removed to allow the U.S. Navy to carry out environmental remediation of the soil contamination under and around the track. *Id.* & Exh. 3. Another environmental remediation project at a nearby location (the site of a former Navy crane test facility) will commence in the near future and will also prevent rail operations to these businesses. For at least the next several months, therefore, there is no possibility of anyone providing rail service to Alco and EPS. *Id.*, ¶ 32.

SFBRR suggests that any service LMI might arrange would be inadequate because it would not be common carrier service, and that Mare Island shippers must have

¹⁰ Sheaff V.S., Exh. 3 (map is an annotated version of Exhibit C to SFBRR's Petition).

the assurance of service for the long term. (Pet., p. 28.) This objection does not support SFBRR's request for a service order. As a threshold matter, SFBRR's position prejudices the core issue raised by SFBRR's petition for declaratory order – whether SFBRR or anyone else has any common carrier obligation relating to the Mare Island trackage. LMI will be responding to that petition on April 5.

More fundamentally, SFBRR's argument is misguided in the context of an emergency service order request. The relief that SFBRR has requested is itself inherently temporary, and is designed only to address short-term failures of service so as to keep rail traffic flowing. *See Roseburg Forest Products*, p. 5.¹¹ The service MIRS stands ready to provide is no less capable of fulfilling that purpose.¹²

B. SFBRR Offers No Evidence of a “Substantial” Service Inadequacy

The Board may not grant an emergency service order if the rail service that is interrupted is not “substantial.” 49 C.F.R. § 1146.1(a). Because no rail traffic has moved to Mare Island for several years, there are no current rail shipping volumes that are potentially subject to interruption. As a result, SFBRR bears the burden of establishing, *inter alia*, that the potential rail traffic it could begin handling immediately would be “substantial.” SFBRR does not ever attempt to carry this burden.

¹¹ The one case SFBRR cites for the proposition that service must be permanent is not applicable here. That case – *PYCO Industries, Inc. – Feeder Line Application – Lines of South Plains Switching, Ltd.*, STB Finance Docket No. 34890 (served Aug. 31, 2007) (cited at Pet., p. 28) – involved not only the forced (and *permanent*) sale of a line under the feeder line program as distinguished from the grant of temporary emergency operating rights, but also a pattern of “service-related retaliation for criticizing a carrier’s rail service” unlike anything at issue here. *PYCO Industries*, p. 12.

¹² As Mr. Peterson explains, moreover, in the event the Board ultimately were to determine that customers on Mare Island must receive service from a Board-authorized rail common carrier, MIRS would be prepared to obtain such authority and conduct such operations. *Peterson V.S.*, ¶ 9; *see also Sheaff V.S.*, ¶ 33.

Although SFBRR makes various assertions about volumes of rail traffic on Marc Island several years ago (Pet., p. 26; *see also id.*, pp. 17-18), it offers no quantification whatsoever of the volume of railcars that XKT or any other customer might be expected to generate if SFBRR were able to provide service, or even whether those customers would be prepared to ship by rail *at all* once they learned how much SFBRR was proposing to charge for its service. At most SFBRR suggests that there are *some* shipments that XKT would desire to move by rail, if SFBRR's shipping rates make rail service economical. But SFBRR offers no evidence suggesting that this would be so.

There is every reason to believe that, at least for the foreseeable future, rail volumes would be very small. The reason rail service ended in 2008 is because volumes had declined to the point that they would not support the infrastructure investments needed to make rail service compatible with the redevelopment of the Island. During the 18 months preceding California Northern's departure from the Island, it switched *only 2.1 cars per week* on the Island. *Sheaff V.S.*, ¶ 17. This does not come close to establishing the kind of "substantial, measurable" disruption necessary to warrant an order under Section 11123. *Roseburg Forest Products*, p. 9. The Board has denied requests for service orders where it is not demonstrated that a significant volume of traffic is subject to the alleged service failure. *See, e.g., American Plant Food Corp – Alternative Rail Service – Line of Texas Northwestern R.R.*, STB Finance Docket No 33795 (served Dec. 6, 1999). And in those few cases where the Board has granted service relief, considerably more traffic was at stake. For example, in both *PYCO Industries, Inc. – Alternative Rail Service – South Plains Switching, Ltd.*, STB Finance Docket No. 34802, (served Jan. 26, 2006), and *Arkansas Midland R.R. – Alternative Rail Service – Line of*

Delta S. R.R. Inc., STB Finance Docket No. 34479 (served Mar. 11, 2004), the shippers deprived of adequate service generated in excess of 6,000 carloads per year (*i.e.*, well over 100 carloads per week).

III. SFBRR'S PROPOSED "COMMON CARRIER" OPERATIONS ON MARE ISLAND WOULD IMPINGE UPON ONGOING TRANSFORMATION OF THE MARE ISLAND SHIPYARD INTO A MIXED-USE DEVELOPMENT

In LMI's April 5 reply to SFBRR's Petition for Declaratory Order, LMI will address more fully the factual context in which SFBRR's claim of entitlement to operate on Mare Island arises, with a particular focus on the implications of such operations for the ongoing transformation of the Island from a military installation into a mixed-use community. The Island's history as military installation and its nascent redevelopment explains why SFBRR could not have any common carrier obligation to serve customers on the Island.

That context is also important because the forced access to the Island that SFBRR seeks would have serious adverse consequences for the Island's ongoing redevelopment. SFBRR is opportunistically seeking to insert itself into the middle of a highly-complex "creation" of a new mixed-use development – really a new city – out of a former military installation. At least while that transformation is underway, SFBRR's proposed operations would be highly disruptive.

SFBRR makes no secret of its intention to insist on the full measure of its "common carrier obligation," demanding that nothing be allowed to disrupt its service. Pet., pp. 20-22, 26-27; Gavrich Dec., ¶¶ 12-13; *see also* Sheaff V.S., ¶¶ 24-25. It demands to operate everywhere on Mare Island that a locomotive can run. Gavrich Dec., ¶ 16 & Exh. C. And it no doubt would claim the full measure of the statutory preemption

afforded by 49 U.S.C. § 10501 to override any legal rights or obligations that LMI or the City may have to complete and/or control the course of development on the Island.

Sheaff V.S., ¶¶ 24-25. As Mr. Sheaff explains, for example, one of the reasons that LMI was not able to reach an agreement with SFBRR allowing it to operate on the Island was SFBRR's insistence that it be able to conduct transloading operations anywhere it wishes. *Id.*, ¶¶ 25, 38. LMI understands that the City of Vallejo shares LMI's concerns.

SFBRR's proposed common carrier operations would interfere with the ongoing redevelopment of Mare Island in numerous important ways. Mr. Sheaff discussed examples of these conflicts in detail in his verified statement (at ¶¶ 37-49). A few bear emphasis here:

- Ongoing Environmental Remediation. Significant environmental remediation is still underway on Mare Island, some by LMI and some by the U.S. Navy. Sheaff V.S., ¶¶ 9, 39. Where soil underlying rail trackage is contaminated, the trackage must be removed to allow cleanup to occur. One remediation project being conducted by the Navy has already required the removal of rail trackage that SFBRR includes in its access demand, and another project will soon require track to be removed at a different location. *Id.*, ¶¶ 31-32. SFBRR's demand for uninterrupted access to Mare Island trackage is incompatible with the need to complete ongoing environmental remediation of Mare Island in accordance with numerous agreements and under the supervision of numerous federal, state and local agencies. *Id.*, ¶¶ 9, 32, 36.

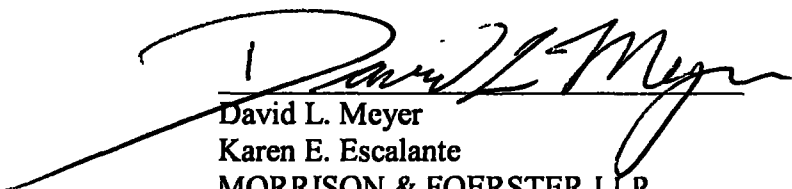
- Ongoing Parcelization of Mare Island. As a Navy facility, Mare Island had a single landowner, and none of the property boundaries and easements of the sort that exist in the "public" world. LMI's redevelopment of the Island will entail the parcelization of the Island, including a determination of which extant rail trackage will be associated with specific parcels to be conveyed to future landowners. Yet SFBRR's demand for unfettered access tramples any such boundaries. For example, it seeks to carry out operations at will on trackage that is slated to become part of the parcel that encompasses the facility that XKT Engineering now leases. SFBRR's request is incompatible with any effort to parcelize the Island and convey specific spur trackage to the businesses that would acquire particular parcels. *Sheaff V.S.*, ¶¶ 44-45.
- Ongoing Reconfiguration of Mare Island Infrastructure. LMI is obligated to make significant infrastructure improvements to former-Navy streets on Mare Island, including Railroad Avenue, Nimitz Avenue, and A Street. Much of the trackage to which SFBRR demands access is laid in the middle of those streets, and will have to be removed while the infrastructure work is underway. *Sheaff, V.S.*, ¶ 43. Again, SFBRR's demand for uninterrupted access to all trackage on Mare Island is incompatible with the imperative that the former-Shipyard's streets be transformed into public thoroughfares.
- Land Use Conflicts. Redevelopment of Mare Island also requires conversion of former-Navy land uses into entirely new uses befitting a

mixed-use community. SFBRR's proposed operations – including its insistence on being able to carry out transloading and the storage of railcars anywhere it wishes at any time – conflict with that transformation. Sheaff, ¶¶ 38, 41-42, 46-48. For example, some of the trackage to which SFBRR demands access is on property that is slated to be transformed into a public plaza. Sheaff V.S., ¶ 47. SFBRR's insistence on being able to operate anywhere it wishes under the mantle of preemptive common carrier authority would not allow crucial elements of Mare Island's evolving redevelopment to proceed.

CONCLUSION

For the foregoing reasons, the Board should deny any emergency relief sought by SFBRR and defer any further consideration of SFBRR's Petition until LMI has replied to SFBRR's Petition for Declaratory Order on April 5, 2010.

Respectfully submitted,



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March 22, 2010

CERTIFICATE OF SERVICE

I, Karen E. Escalante, certify that on this date a copy of the Reply of Lennar Marc Island, LLC in Opposition to Petition for Emergency Service Order Pursuant to 49 U.S.C. § 11123, filed on March 22, 2010, was served by email and by first-class U.S. mail, postage prepaid, on all parties of record, specifically:

John F. McHugh
6 Water Street
Suite 401
New York, NY 10004
Email: JFMcHughPC@AOL.com



Karen E. Escalante

Dated: March 22, 2010

Exhibit A
Sheaff V.S.

VERIFIED STATEMENT

OF

THOMAS SHEAFF

1. My name is Thomas Sheaff. Since 1998, I have served in various capacities for Lennar Mare Island, LLC ("LMI"). Currently, I am a Vice President and an officer of Lennar Homes of California, the sole member of LMI.

2. I have been responsible for LMI's implementation of its Mare Island redevelopment project. I am familiar with LMI's acquisition of Mare Island from the City of Vallejo, the redevelopment objectives of the City and LMI, LMI's plans for carrying out those objectives, and all of the issues associated with the former U.S. Navy rail trackage located on Mare Island and owned by LMI.

3. I have also been personally involved in discussions with San Francisco Bay Railroad-Mare Island ("SFBRR") regarding its proposed operations on LMI-owned trackage and LMI's arrangements for rail service on Mare Island.

4. I am submitting this statement in connection with LMI's reply to the petition filed by SFBRR seeking an order from the Board granting SFBRR forced access to LMI-owned rail trackage on Mare Island. I understand that I will have the opportunity to address the many problems raised by SFBRR's request in more detail at a later date, but wanted to convey several key points to the Board.

History of Property Ownership and Railroad Operations on Mare Island

5. LMI is a real estate development company that owns and is in the process of redeveloping a significant portion of the property formerly occupied by the U.S. Navy's Mare Island Shipyard, including the rail trackage on Mare Island to which SFBRR seeks access. For more than 150 years, the Mare Island Naval Shipyard, a major U.S. Navy installation, occupied all of Mare Island. The Shipyard was placed on the official base closure list in 1993 and was officially closed in 1996. The U.S. Government entered into agreements providing for the conveyance of portions of the real property underlying the former Shipyard to the City of Vallejo for conversion to civilian use. The City contemplated that the former base would be comprehensively redeveloped into an extensive and vibrant mixed-use civilian community. To carry out this vision, the City conducted an exhaustive public selection process, and appointed LMI as the master developer in 1997. In this role, LMI commenced a multi-year year process that is still underway and has included the settlement of numerous jurisdictional issues, coordination of entitlements between many public and private agencies, development in conjunction with the City of a comprehensive plan for redevelopment (primarily referred to as the "Specific Plan"), preparation of a full Environmental Impact Report ("EIR"), oversight of one of the most complex environmental clean up projects in California, and coordination of all types of land uses where no such planning and coordination had previously existed.

6. The first 653 acres of the Mare Island site were conveyed to LMI in 2002. As part of carrying out Mare Island's redevelopment of this property, LMI entered into an innovative "early transfer agreement" with the U.S. Navy that transfers certain environmental responsibility to LMI and thereby allows development to be accelerated.

Certain environmental cleanup responsibilities, both within and outside LMI's 653 acres, were retained by the U.S. Navy, and the Navy's remediation efforts are ongoing, including work that has necessitated the removal of certain rail trackage by the Navy's contractor to allow it to address contamination of underlying soil.

7. The redevelopment plan contemplates that the former-Shipyard will have 1,400 residential unit and over seven million square feet of commercial space devoted to industrial, manufacturing, office, civic, retail, restaurant, and entertainment uses.

Redevelopment will also include creation of an extensive park, pedestrian and bicycle system throughout the Island that links all land uses. A majority of the 403 historic structures and other historic resources at the former-Shipyard will be retained and reused.

8. Substantial redevelopment work has already been carried out. LMI has already invested over \$140 million in the redevelopment of Mare Island, mostly on design and construction infrastructure for LMI-owned portions of Mare Island as well as adjacent property. There are approximately 90 businesses, and in excess of three million square feet occupied, all resulting in more than 1,865 new permanent jobs. Residential land sales to third parties have led to 274 residential units. Commercial properties have been sold. Mare Island has a public elementary school, a private university with over 1,500 students and faculty, and a museum. Approximately 50 percent of LMI's property has been certified as clean by the environmental regulators, and over 45 historic U.S. Navy buildings have been put back into use.

9. The development project is very much a work in progress. Extensive work remains, including a significant amount of work to address additional environmental remediation and infrastructure improvements to deal with conditions

inherited from the years when this property was a working Navy installation. LMI continues to design infrastructure and continues to meet its obligations to rehabilitate streets, wet and dry utilities, railroad trackage and other infrastructure so that it is safe and compatible with the radically-transformed public land, mixed-use, needs of Mare Island. As a military facility, of course, Mare Island was not accessible to the public, was not built in conformance with any minimum standards or specifications that would normally be applied by public agencies, and, as a result, its infrastructure was not designed with public use and civilian safety as a principal consideration. Allowing public access to new local parks, the new waterfront promenade, new regional parks and wetlands on the Island, the new pedestrian and bike paths, and the new public ferry terminal, all in the context of a site that was, in large part, previously devoted to heavy military industrial use, are just a few of the many complex issues that LMI and the City of Vallejo are working to address. LMI is working closely with the City to identify safe and cost-effective solutions.

Railroad Trackage and Operations on Mare Island

10. When Mare Island was a military installation, the U.S. Navy installed and operated several miles of railroad trackage that it used to carry out its own military functions. For example, trackage connected ammunition storage facilities on the Island with docks used to load munitions on warships, and equipment was delivered by rail from the mainland to the warehouse, manufacturing and drydock facilities used by the Navy to build and maintain warships. Befitting the Shipyard's status as a major industrial site, and because public access and safety were not paramount issues at the time, much of the

trackage, particularly in the eastern portion of the Island, was laid directly in the Shipyard's streets, roadways and parking lots, rather than occupying its own right of way.

11. When the Navy closed the Mare Island shipyard in the mid-1990s, it also shut down its own rail operations. Much of the former Navy trackage remained in place, however. LMI and the City of Vallejo believe that some portions of that trackage could play a productive role in the redevelopment of Mare Island, so long as any use of that trackage could be carried out in a manner compatible with the ongoing mixed-use redevelopment of Mare Island as a whole.

12. After the Navy's own rail operations ceased, the first rail operations on the line that were conducted by an entity other than the Navy were those of California Northern Railroad, pursuant to a short-term license granted by the U.S. Navy to California Northern in 1994. I have attached as Exhibit 1 a copy of this license agreement and the various extensions that continued this arrangement until September 1998.

13. The Navy license allowed California Northern to continue to provide switching services at certain former-Shipyard facilities and operate on Navy trackage to a connection with California Northern's own leased trackage at Flosden Acres

14. It is my understanding that neither the trackage on Mare Island, nor the segment connecting Mare Island to Flosden Acres, was ever operated by Southern Pacific. The only line in the vicinity ever operated by Southern Pacific was its Vallejo Branch.

15. To maximize potential economic development opportunities on Mare Island, LMI recommended to the City of Vallejo that Mare Island redevelopment plans

make provision for the re-establishment of rail service on at least some portions of the former-Navy trackage. This objective was reflected in revisions to the Mare Island Specific Plan in 2005 and 2007, and also in the accompanying Environmental Impact Report.

16. For several years after LMI took responsibility for Mare Island redevelopment, LMI subsidized California Northern's switching service in order to maintain the rail option for LMI tenants.

17. California Northern's operations on Mare Island ceased in early 2008. Over the last 18 months before California Northern stopped operating, on average it switched only 2.1 cars per week on the Island. Among the causes of this decline were a devastating fire at one business on Mare Island, and the decision by another – North Pacific Lumber – to relocate its operation from the Island, where it had a short-term lease of a parcel slated for redevelopment, into facilities elsewhere that were available on a longer-term basis. (North Pacific did not leave because of high rail charges.) At the same time, the City had conditioned its approval of parcelization on significant infrastructure work in part to accommodate rail operations, but the funding sources outlined in the City-approved Specific Plan had not materialized. The combination of these factors led LMI and California Northern to conclude that the declining rail service would no longer support the infrastructure work in a manner that would make rail service compatible with the Island's redevelopment.

18. California Northern did not seek Board authority when it ceased operating on Mare Island. To the contrary, California Northern specifically informed LMI that its operations on Mare Island were "not common carrier operations" and that no Board

authority was required for California Northern to discontinue them. Attached as Exhibit 2 is a February 6, 2008 letter from California Northern to LMI explaining California Northern's views on this subject.

19. North Pacific's situation is in fact illustrative of the kinds of land use issues raised by the ongoing redevelopment on Mare Island. When North Pacific came to Mare Island, the City made clear to it that the area that the City was leasing to North Pacific was designated in the long run for more intense, job-generating, uses than North Pacific's lumber yard operations. In 1999, and then again via amendments in 2005, 2007, and 2008, the City approved or reaffirmed the Specific Plan, which confirmed that a lumber distribution facility was not part of the Specific Plan or the Environmental Impact Report. In the meantime, North Pacific had located property in Napa that it was able to procure on a longer-term basis. I understand that North Pacific's operations at the Napa location ceased in the latest economic downturn.

20. Beginning in August of 2008, LMI, as a result of its initial meetings with Alstom, recognized the potential opportunity to return rail service to Mare Island. Alstom desired to refurbish passenger railcars at a facility on Mare Island, which would entail having those cars delivered by rail. LMI spent almost a year working with the City and Alstom to bring Alstom to Mare Island. It should be noted that Alstom, the City and LMI all made major concessions related to land use, the Specific Plan, infrastructure obligations, financial obligations, and legal rights in connection with Alstom's decision to locate on Mare Island. As discussed in more detail below (at ¶¶ 22-23 & 27), Alstom's lease allows it to arrange for private switching for deliveries of railcars on its spur. In

accordance with the terms of its lease, Alstom allowed SFBRR to use that spur for private deliveries of railcars to Alstom.

SFBRR'S Proposed Operations

21. SFBRR is a stranger to Mare Island, having no connection to the Island and no interest (with the exception any private arrangements it may have with Alstom) in the railroad trackage on Mare Island. The Notice of Exemption SFBRR filed in September 2008 came as a surprise to LMI. In spite of contact with LMI before SFBRR's Notice was filed, SFBRR did not inform LMI that it intended to seek Board authority to operate over LMI property on Mare Island prior to filing its Notice.

22. Despite SFBRR's unilateral action, LMI opened a dialog with SFBRR about SFBRR's intentions with respect to the Mare Island trackage, and the terms on which LMI might be prepared to allow it to use LMI-owned trackage to provide private rail service on the Island. Although SFBRR initially claimed that it did not need LMI's permission to use track on Mare Island, SFBRR later acknowledged that it did not have any contractual right to operate on LMI's trackage. In November 2009, LMI informed SFBRR that, without regard to the outcome of ongoing discussions between LMI and SFBRR about broader rights to operate on Mare Island, SFBRR could operate on the Alstom spur (the first 300 yards on the Mare Island side of the Causeway) to serve Alstom, per the terms of Alstom's lease. Alstom and its spur are depicted on the map attached as Exhibit 3, which is an annotated version of the map submitted by SFBRR as Exhibit C to its Petition (the yellow highlighting is SFBRR's depiction of the trackage to

which they demand immediate access). I have marked Alstom's location with an "A" on Exhibit 3.

23. The only operations SFBRR has conducted on Mare Island have involved the delivery of cars to Alstom. To reach Alstom, SFBRR uses rights granted to Alstom in the lease covering its facility, which allow Alstom to arrange for private switching service for deliveries of railcars on its spur.

24. Based on LMI's discussions and correspondence with SFBRR about a potential arrangement for SFBRR to operate on Mare Island, LMI reached the conclusion that SFBRR's objectives are incompatible with LMI's property interests and redevelopment obligations, and that no agreement with SFBRR is possible. Although SFBRR has absolutely no contractual or other rights from LMI to use LMI's property, it nevertheless asserts that LMI is obligated to grant it virtually unrestricted access to LMI's trackage – including the right to operate anywhere at any time hauling any commodity it wishes – based solely on SFBRR's claim that its Notice of Exemption purports to appoint it the "common carrier" operator of trackage on Mare Island.

25. During discussions with LMI, SFBRR made no secret of its intention to insist on the full measure of its "common carrier obligation." It asserted that LMI could do nothing to disrupt its service on Mare Island, that it could operate anywhere and everywhere on Mare Island, and that it could establish any kind of rail service it wished – including transloading and car storage – without regard to potential conflicts with the ongoing redevelopment or the environmental clean-up program that is underway on Mare Island. SFBRR has repeatedly stated that federal railroad law would supersede all existing agreements relating to Mare Island redevelopment. SFBRR has stated on several

occasions that it would seek to have terms imposed by the Board if LMI did not accede to its demands. SFBRR thus refused to acknowledge agreements associated with the build out of Mare Island and the environmental clean up program, all of which are critical to the City, the residents and the existing businesses, including those businesses who would desire to receive rail service.

26. SFBRR has repeatedly demonstrated that it has no desire to work collaboratively with LMI, the City or any other stakeholders in the redevelopment of Mare Island. Instead, SFBRR has consistently stated that it is not willing to work with, acknowledge or live by local, state, or federal agreements that govern the redevelopment process.

LMI Has Arranged for Customers of Mare Island to Receive Service

27. LMI has long desired that its tenants and other businesses on Mare Island have the option of rail service, if that service can be provided in a way that is economical and does not conflict with the Island's redevelopment. LMI has subsidized operations, has recommended in its 2005 submission to the City concerning the Specific Plan that rail service remain, and then facilitated the return of rail service by pursuing and completing the lease with Alstom. The lease with Alstom provided a critical funding source for at least a portion of the costs associated with rail operation, and LMI saw this as a positive step towards re-starting rail service.

28. After several unsuccessful attempts to reach agreement with SFBRR, LMI continued to carry out its aim to make rail service an option for LMI's tenants and other businesses on Mare Island, and LMI has arranged for a private rail operator, T&O

Railroad Company, Inc. ("T&O"), doing business as Mare Island Rail Service ("MIRS") to perform private switching services on Mare Island. T&O is an affiliate of Tri-City Railroad Company, LLC ("TCRY"), an experienced rail carrier licensed by the Board with operations in the State of Washington. Pursuant to the agreement between LMI and T&O, MIRS will provide switching services throughout Mare Island. MIRS will move railcars to and from former-U.S. Navy sidings and spurs on Mare Island as appropriate to allow for loading and unloading of railcars at locations where LMI has leased or conveyed facilities to businesses that LMI has concluded would benefit from rail service, and where such service would not impinge on the broader redevelopment interests shared by LMI and the City.

29. LMI has been eager for MIRS to begin moving railcars on the Island, and LMI has specifically authorized it to provide service to XKT Engineering ("XKT") and the other potential customers identified in SFBRR's Petition as candidates for service by SFBRR. MIRS has informed LMI that it has been ready to provide service for several weeks, but that it has not been able to do so because SFBRR has not been willing to make arrangements for the delivery of cars to MIRS at the west end of the Mare Island Causeway.

30. MIRS is also prepared to begin service immediately to other customers on Mare Island, provided that doing so is not foreclosed by the ongoing redevelopment of Mare Island. MIRS has provided personnel, equipment and performed maintenance in advance of anticipated service. At the moment there is no obstacle (other than SFBRR's unwillingness to deliver cars) to MIRS providing efficient service to all of the potential customers identified in SFBRR's Petition – XKT, Earthquake Protection Systems

("EPS"), Alamillo Rebar, Alco Iron & Metal, Jeffco/ABC, Cooper Crane, and CS Marine – with only two exceptions: Alco and EPS.

31. Unfortunately, Alco and EPS currently could not be served by any rail operator. Their facilities are located at the north end of the potentially-operational trackage on Mare Island (at the top of the first page of Exhibit 3). The trackage needed to reach those businesses is not in service because it has been physically removed to allow the U.S. Navy to carry out environmental remediation of soil contamination under and around that track. I have marked this location with a "B" on Exhibit 3.

32. Another environmental remediation project is scheduled to commence soon, and it will also prevent rail operations on the same track segment because it will require the removal of track at a nearby location. This project is required to remediate contamination at the former-Navy crane test facility, which also affected soil under the rail trackage. I have marked this location with a "C" on Exhibit 3. For at least the next several months, therefore, there is no possibility of anyone providing rail service to EPS and Alco. The Mare Island environmental cleanup program is under the oversight of several federal, state and local agencies. The lead agency is the State of California Environmental Protection Agency, which has ultimate responsibility for regulatory approval.

33. LMI has discussed with MIRS whether it would be willing to expand its operations to move railcars all the way to Flosden Acres and a connection with California Northern, and it has indicated that it would be willing to do so if appropriate arrangements could be worked out with the City of Vallejo, which owns the trackage between Mare Island and Flosden Acres. MIRS would also be willing to convert its

operations into common carrier operations, and seek appropriate Board authority, if it were determined that customers on Mare Island must be served by such a carrier and that step made economic sense.

SFBRR's Proposed Operations Are Incompatible with the Ongoing Redevelopment of Mare Island

34. LMI's principal and fundamental concern with providing SFBRR with access to Mare Island is that SFBRR is opportunistically seeking to insert itself into the middle of the ongoing redevelopment of Mare Island in a manner that is insensitive to and incompatible with the successful completion of that transformation. At least while the transformation of Mare Island is underway, the sweeping rights that SFBRR claims to have as a Board authorized "common carrier" would disrupt the cooperative efforts of the City and LMI to complete the transformation process.

35. SFBRR does not specify the terms for the forced access it seeks, instead suggesting that the parties should agree on "lawful and reasonable terms," with the Board imposing such terms if the parties fail to agree. Were the Board to require that LMI provide access to SFBRR, we would of course attempt to work out acceptable terms with SFBRR, including reasonable compensation that fully reflects the costs associated with devoting rail trackage on Mare Island to SFBRR's proposed operations. However, it is quite apparent to LMI that the terms and conditions SFBRR contemplates, as reflected in its Petition and in discussions with LMI that preceded that Petition, would have grave consequences for redevelopment on the Island.

36. The interference that SFBRR's intrusion would cause likely would have severe long-term consequences, both for the success of the redevelopment itself and for

the jobs and revenues realized by the City of Vallejo, which is currently in bankruptcy proceedings. As I summarize below, SFBRR's proposed common carrier operations would eliminate needed parking, interfere with planned public access to facilities, override entitlements established throughout the 17-year redevelopment process, create safety and traffic issues, and generally prevent the City and LMI from carrying out Mare Island's redevelopment in the manner set forth in numerous agreements and public planning documents. A few examples of the conflict SFBRR's access to Mare Island would create are described below.

37. **Hazardous Materials.** SFBRR insists on being free of any restrictions related to the storage, handling or use of hazardous materials. Its operations therefore potentially would jeopardize many other agreements and millions of dollars of funding, and would not be compatible with development in several areas of Mare Island. LMI offered to set forth a protocol for hazardous materials. Such suggestions were rejected by SFBRR, citing their rights as a "common carrier."

38. **Transloading.** SFBRR has refused to discuss limitations on its ability to perform transloading operations. Instead SFBRR insists that its rights under federal law are broad. LMI is not opposed to all potential transloading. Such activities, however, must be consistent with Mare Island redevelopment plans. An unfettered right to conduct such operations anywhere on or adjacent to the Island's rail trackage that SFBRR might wish would prevent LMI and the City from controlling land uses on the Island, at a time when the coordination of uses is uniquely important to the successful transformation of the Island into a vibrant mixed-use community.

39. Environmental Remediation. As noted above, significant environmental remediation is still underway on Mare Island, some by LMI, some by the U.S. Navy and others. When soil or groundwater underlying rail trackage is contaminated, the trackage must be removed to allow cleanup to occur. One remediation project being conducted by the Navy has required the removal of rail trackage that SFBRR includes in its access demand (marked with a "B" on my Exhibit 3), and another project will require track to be removed at a different location (marked "C" on my Exhibit 3). SFBRR's demands for uninterrupted access to all trackage on Mare Island is incompatible with the need to complete these projects and others like them. I noted that SFBRR's attempt to characterize language in the agreements that LMI proposed to SFBRR as reflecting "LMI's intent to terminate service" is misleading and incorrect. Because LMI does not have exclusive control over the scope, funding, or timing of environmental remediation, it has consistently adhered to its policy of informing Mare Island businesses about possible interruptions or termination of service.

40. Parking and Access. SFBRR's proposed operations would also conflict with critical parking and access needs planned for Mare Island under the Specific Plan and the EIR. The Navy's use of the property on Mare Island did not need to accommodate significant parking and access needs, and as a result space for those uses is scarce. In the planning process, the City and LMI have for many years struggled to juggle competing needs, including parking, access, preservation of historic resources, and the need of most large manufacturing user's for yard space. The truck and rail routes outlined in the Specific Plan and the EIR balanced these uses and allowed the City to approve these critical documents. SFBRR's proposed operations would eat into these

spaces at numerous critical locations, including the entire Railroad Avenue and Nimitz Avenue corridors. The Railroad Avenue corridors marked with an "E" on Exhibit 3; the Nimitz Avenue corridor is marked with a "J."

41. **Storage of Railcars.** In discussions with LMI, SFBRR has not been willing to limit where or when it could store railcars on LMI-owned trackage. Storage "anywhere, at anytime" would interfere with the redevelopment of Mare Island and limit the flow of commerce on the Island. It would prevent ingress and egress at numerous facilities on the Island. It would be incompatible with the new office and retail buildings, parking lots, recreational centers, a medical clinic, a museum, pedestrian and bicycle paths and other uses on Mare Island. It is also incompatible with LMI's obligation to preserve the historic character of portions of Mare Island.

42. **California State Lands Commission Industrial Easement.** The California State Lands Commission has required a 100-foot-wide industrial easement recorded on the property along Nimitz Avenue. The location of that easement is marked with a "D" on Exhibit 3. Rail storage on the trackage in this street would not be compatible with this requirement.

43. **Street Infrastructure Improvements.** LMI is obligated to make significant infrastructure improvements to former-Navy streets on Mare Island, including Railroad Avenue. Much of the trackage to which SFBRR demands access is laid in the future rights-of-way of several of the Island's major streets, including Railroad Avenue (marked with an "E"), Nimitz Avenue (marked with a "J") and the west end of the Causeway (marked with a "K"). The trackage in those streets will have to be removed (or service interrupted on those segments) while the infrastructure work is underway. Again,

SFBRR's demand for uninterrupted access is incompatible with the imperative that the former-Shipyard's streets be transformed into a condition suitable for public use. As I noted above, SFBRR's attempt to characterize language in the agreements that LMI proposed to SFBRR as reflecting "LMI's intent to terminate service" is misleading and incorrect. As with environmental remediation, LMI does not have exclusive control over the scope, funding, or timing of the infrastructure improvements, and LMI has consistently adhered to its policy of informing Mare Island businesses about possible interruptions or termination of service.

44. Parcelization of Mare Island. As a Navy facility, Mare Island had a single landowner, and none of the property boundaries and easements of the sort that exist in the "public" world. LMI's redevelopment of the Island will require the parcelization of the Island, including a determination of which extant rail trackage will be associated with specific parcels to be conveyed to future landowners. Yet SFBRR's demand for unfettered access tramples any such boundaries. SFBRR insists on operating over track that traverses property that has not been parcelized, and its demands are therefore inconsistent with the future allocation of property ownership and use on Mare Island. Final planning for parking, access, infrastructure, easements has not yet been carried out. Examples include almost the entirety of Railroad Avenue (marked with an "E" on Exhibit 3) and A Street (marked with an "F"). SFBRR disregards future ownership along these corridors, where not all streets will be converted to public streets, and not all existing rail trackage will be part of future easements for rail use.

45. For example, although SFBRR's exhibits are somewhat inconsistent, it appears that SFBRR seeks to carry out operations at will on trackage that is slated to

become part of the parcel that encompasses the facility that XKT now leases and is adjacent to Jeffco (labeled with a "G" on Exhibit 3). SFBRR's demand for access is incompatible with any effort to parcelize the Island and convey specific spur trackage to the businesses that would acquire particular parcels.

46. Leasehold Interference. SFBRR's proposed operations, as depicted on its Exhibit C, would conflict with the existing rights of LMI's lessees. The "route" claimed by SFBRR interferes with existing leases to the Veterans Administration, MuriGenics, Jeffco, Alamillo, Cooper and XKT locations, along Railroad Avenues and Nimitz Avenues (marked as "E" and "J" on Exhibit 3).

47. Interference with Planned Uses and Future Public Space. Redevelopment of Mare Island also requires conversion of certain former Navy land uses into entirely new uses befitting a mixed use community. SFBRR's proposed operations conflict with that transformation. For example, some of the trackage to which SFBRR demands access is on property that is slated to be transformed into a public plaza within the Historic Core (marked "H" on Exhibit 3). SFBRR's insistence on being able to operate anywhere it wishes under the mantle of preemptive common carrier authority would not allow crucial elements of Mare Island's redevelopment to proceed.

48. More generally, the City and LMI have been working to implement the public access, public open space, pedestrian walkways and bicycle paths, along with numerous agencies, including the State of California Bay Conservation and Development Corporation. Public Access has been planned for the area marked "L" on my Exhibit 3. SFBRR's planned operations throughout Mare Island are completely incompatible with these plans.

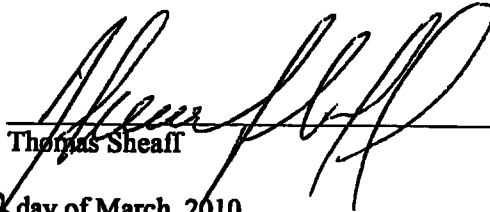
49. Another example is marked "I" on my Exhibit 3. SFBRR's proposed operations would run across a parcel slated to be leased and developed by ADR/CDDS for purposes of re-opening the Mare Island dry docks and conducting ship dismantling operations along with other future ship and marine activities. The City of Vallejo, LMI and numerous local and state agencies have been working on this proposal for more than two years. Significant investment has occurred. Several approvals are in place, and several remain outstanding. If SFBRR could operate through this property, it would affect parking, security, access, loading, and other day to day operations, and therefore, it would be impossible for the City and LMI to complete this transaction. The transaction, would, if completed, contribute directly to police and fire protection services provided by the currently bankrupt City of Vallejo, contribute funds for fees and permits, create up to 120 jobs, and allow for dredging which will contribute to further economic development. LMI is undertaking continuous efforts to lease space, and therefore, is constantly in negotiations with potential tenants. Such negotiations would be much more difficult if a rail operator is in place who will not be operating in a manner that is consistent with the Specific Plan and other reasonable limitations.

50. For all of the above reasons, the Board should not grant SFBRR the forced access it seeks.

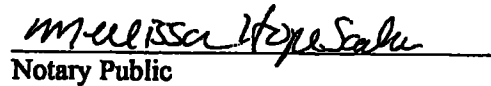
VERIFICATION

State of California)
)
) SS
)
County of Solano)

Thomas Sheaff, being duly sworn, deposes and says that he has read the foregoing statement, knows the facts asserted therein are true and that the same are true as stated.


Thomas Sheaff

Subscribed and sworn to before me this 22 day of March, 2010.


Notary Public

Notary Public of California

My Commission expires: July 19 2010



Finance Docket No. 35360

Licenses From The Navy To California Northern

Exhibit 1

(to Verified Statement of Thomas Sheaff)

GENERAL USE OF REAL PROPERTY
LICENSE NUMBER NC-47494PDEC-55

THIS LICENSE TO USE THE U.S. GOVERNMENT PROPERTY HEREIN DESCRIBED IS ISSUED BY THE DEPARTMENT OF THE NAVY TO THE LICENSEE NAMED BELOW FOR THE PURPOSE HEREIN SPECIFIED UPON THE TERMS AND CONDITIONS SET FORTH BELOW AND THE GENERAL PROVISIONS ATTACHED. BY THE EXECUTION HEREOF THE LICENSEE AGREES TO COMPLY WITH ALL SUCH TERMS, CONDITIONS AND GENERAL PROVISIONS.

1. NAVAL ACTIVITY

04-9320
 MARIE ISLAND NAVAL SHIPYARD
 VALLEJO, CALIFORNIA

2. DATES COVERED

FROM 1 JUNE 1994 TO 31 MAY 1995

3. DESCRIPTION OF PROPERTY

USE OF 1,000 SQUARE FEET IN BUILDING 637 AS SHOWN ON THE FLOOR PLAN MARKED EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

4. PURPOSE OF LICENSE

PERIODIC INSPECTION OF LOCOMOTIVES AND PREVENTATIVE MAINTNANCE OF LOCOMOTIVES

5. LICENSEE

UNITED STATES OF AMERICA
 DEPARTMENT OF THE NAVY

5a. LOCAL REPRESENTATIVE, DEPARTMENT OF NAVY OFFICIAL

COMMANDER, WESTERN DIVISION, NAVAL FACILITIES ENGINEERING COMMAND
 900 CONCORD DRIVE, SAN BRUNO, CA 94066-2402

6. LICENSEE

CALIFORNIA NORTHERN RAILROAD COMPANY,
 LIMITED PARTNERSHIP
 129 KLAMATH COURT
 AMERICAN CANYON, CA 94509

6a. LOCAL REPRESENTATIVE

BILL HERNDON (707) 557-2868

7. CASH PAYMENT BY LICENSEE (Payable in advance)

a. AMOUNT

9450

b. FREQUENCY PAYMENTS DUE

MONTH

c. FIRST DUE DATE

1 JUNE 1994

d. TO

COMMANDER, WESTERN DIVISION
 NAVAL FACILITIES ENGINEERING COMMAND
 FILE 91769, P.O. BOX 60000
 SAN FRANCISCO, CA 94160-1769
 d. TO

8. DEPOSIT FOR UTILITIES AND SERVICES (Payable in advance)

a. AMOUNT

b. FREQUENCY PAYMENTS DUE

c. FIRST DUE DATE

TO BE DETERMINED BY PWC SAN FRANCISCO BAY, OAKLAND, CA

9. INSURANCE REQUIRED AT EXPENSE OF LICENSEE

| TYPE | MINIMUM AMOUNT | TYPE | MINIMUM AMOUNT |
|--------------------------------|----------------|---|----------------|
| a. FIRE AND EXTENDED COVERAGE | \$ NONE | c. THIRD PARTY PERSONAL INJURY PER PERSON | \$ 1,000,000 |
| b. THIRD PARTY PROPERTY DAMAGE | \$ 1,000,000 | d. THIRD PARTY PERSONAL INJURY PER ACCIDENT | \$ 3,000,000 |

10. GENERAL PROVISIONS

SEE SPECIAL PROVISIONS ATTACHED HERETO AND MADE A PART HEREOF.

11. EXECUTION OF LICENSE

FOR

BY

SIGNATURE

DATE

DEPARTMENT
 OF THE
 NAVY

NAME AND TITLE
HANSEL N. HARRISON, JR.
 Manager, Realty Operations Branch
 Real Estate Contracting Officer

A. E. Harrison Jr.

6/3/94

LICENSEE

DAVID L. PARKINSON CHAIRMAN

David L. Parkinson

6/2/94

IF LICENSEE IS A CORPORATION, CERTIFICATION OF SIGNATURE IS ATTACHED _____

a. The Licensor hereby grants to the Licensee the right to use the premises or facilities described in Item 3, together with the necessary rights of ingress and egress.

b. This License shall be effective for the period stated in Item 2 and is revocable at any time without notice at the option and discretion of the Licensor or its duly authorized representative.

c. The use shall be limited to the purposes specified herein.

d. This License shall be neither assignable nor transferable by the Licensee.

e. If utilities and services are furnished the Licensee for its use of the premises the Licensee shall reimburse the Licensor for the cost thereof as determined by the Licensor in accordance with applicable statutes and regulations.

f. No additions to, or alterations of, the premises or facilities shall be made without the prior consent of the Licensor. Upon revocation or surrender of this License, to the extent directed by the Licensor, the Licensee shall remove all alterations, additions, betterments and improvements made, or installed, and restore the premises or facilities to the same, or as good condition as existed on the date of entry under this License, reasonable wear and tear excepted.

g. The Licensee shall be liable for any loss of, or damage to, the premises or facilities incurred as a result of its use and shall make such restoration or repair, or monetary compensation as may be directed by the Licensor. The Licensee's liability for loss or damage to the premises resulting from risks expressly required to be insured hereunder shall not exceed the amount of insurance so required. The Licensee shall not be liable for loss of, or damage to, the premises arising from causes beyond the control of the Licensee and occasioned by a risk not in fact covered by insurance and not customarily covered by insurance in the locality in which the premises are situated. Nothing contained herein, however, shall relieve the Licensee of liability with respect to any loss or damage to the premises, not fully compensated for by insurance, which results from willful misconduct, lack of good faith, or failure to exercise due diligence, on the part of the Licensee. All insurance required of the Licensee on the premises shall be for the protection of the Licensor and the Licensee against their respective risks and liabilities in connection with the premises. Each policy of insurance against loss or damage to Government property shall name the Licensee and the United States of America, Department of the Navy, as the insured and shall contain a loss payable clause reading substantially as follows:

"Loss, if any, under this policy shall be adjusted with (Name of Licensee) and the proceeds, at the direction of the Government, shall be payable to (Name of Licensee), and proceeds not paid to (Name of Licensee) shall be payable to the Treasurer of the United States of America."

In the event that any item or part of the premises or facilities shall require repair, rebuilding or replacement resulting from loss or damage, the risk of which is assumed under this paragraph h, the Licensee shall promptly give notice thereof to the Licensor and, to the extent of its liability as provided in this paragraph, shall, upon demand, either compensate the Government for such loss or damage, or rebuild, replace or repair the item or items of the premises or facilities so lost or damaged, as the Licensor may elect. If the cost of such repair, rebuilding, or replacement exceeds the liability of the Licensee for such loss or damage, the Licensee shall effect such repair, rebuilding or replacement if required so to do by the Licensor, and such excess of cost shall be reimbursed to the Licensee by the Licensor. In the event the Licensee shall have effected any repair, rebuilding or replacement which the Licensee is required to effect pursuant to this paragraph, the Licensor shall direct payment to the Licensee of so much of the proceeds of any insurance carried by the Licensee and made available to the Government on account of loss of or damage to any item or part of the premises or facilities as may be necessary to enable the Licensee to effect such repair, rebuilding or replacement. In event the Licensee shall not have been required to effect such repair, rebuilding, or replacement, and the insurance proceeds allocable to the loss or damage which has created the need for such repair, rebuilding or replacement have been paid to the Licensee, the Licensee shall promptly refund to the Licensor the amount of such proceeds.

h. The Licensee shall indemnify and save harmless the Government, its officers, agents, servants and employees from all liability under the Federal Tort Claims Act (62 Stat. 869, 982; 28 U.S.C. Sec 2671, 2680) or otherwise, for death or injury to all persons, or loss or damage to the property of all persons resulting from the use of the premises by the Licensee, and shall furnish the insurance specified in Item 9. Each policy of insurance required in Item 9 covering bodily injuries and third party property damage shall contain an endorsement reading substantially as follows:

"The insurer waives any right of subrogation against the United States of America which might arise by reason of any payment made under this policy."

[Handwritten signature]

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SPECIAL PROVISIONS

1. Licensee will provide five days written notification to Mr. Jerry Wington of Mare Island Naval Shipyard, Code 980 (707) 646-1816 prior to arrival for work and departure from work for more than 30 days.
2. Licensee will follow all Occupational, Safety, and Health (OSH) safety rules pertaining to railroad operations. All personnel performing work shall comply with applicable OSH regulations.
3. Licensee shall manage hazardous waste and hazardous material in accordance with all applicable federal, state and local regulations. Licensee shall be required to obtain all applicable permits and provide all applicable reports, such as hazardous waste and hazardous material reports. All work shall be conducted in accordance with federal, state and local regulations.
4. Licensee will leave a clean and orderly work site at the end of each work day.
5. California Northern Railroad personnel shall not use the overhead bridge crane.
6. The primary work site for California Northern Railroad personnel shall be the center bay of Building 637 in the area of the maintenance pits. See Exhibit "A".
7. Mare Island personnel will assist with crane service and machine shop service on a request and reimbursable basis as time allows.
8. Normal hours of operations for California Northern Railroad maintenance in Building 637 shall be 0730 to 1600 hours, Monday through Friday without prior approval by Mare Island Naval Shipyard, Code 980 management.
9. The work site will be for preventative maintenance and inspections only, not overhaul type work.
10. California Northern Railroad personnel will be authorized to operate their equipment on the Mare Island Naval Shipyard trackage system from the interchange onto the Shipyard, excluding the trackage inside the Controlled Industrial Area (C.I.A.).
11. The time limit for storage of locomotives will not exceed one week. Spaces will be coordinated with, Mr. Jerry Wington of Mare Island Naval Shipyard, Code 980 at (707) 646-1816 for the parking of locomotives.
12. No more than two locomotives (railroad vehicles) may be on board the Shipyard at any one time.
13. The Licensee shall be responsible for paying for and effecting all restoration and environmental clean-up required as result of work performed by the Licensee, or as a result of services provided under this License. Such restoration and clean-up shall be in accordance with all applicable Federal, State and local laws and regulations. The Licensor shall be responsible for existing environmental contamination at the work site, if any, prior to the Licensee's use of same and for any environmental contamination of the work site caused by the Licensor or its agents during the term of this License.
14. Licensee will at all times during the use of this license promptly observe and comply, at its sole cost and expense, with the provisions of all applicable Federal, State, and local laws, regulations, and standards and pollution control and abatement. Licensee shall promptly notify the Government and supply copies of any notices, reports, correspondence, and submissions made by Licensee to any Federal, State, or local authority, or received by Licensee from said authority, concerning environmental matters or hazardous substances or hazardous waste on, about, or pertaining to the Premises. Licensee shall indemnify, defend and hold harmless the Government from and against all claims, liabilities, losses, damages and costs, foreseen or unforeseen, which the Government may incur by reason of Licensee's action or non-action with regard to obligations under this paragraph, and this provision shall survive the expiration or termination of the license. Only HS required to perform preventative maintenance may be stored or used on the premises. The Licensee shall make the licensed area available for inspection by the Shipyard's Environmental Inspectors upon request.
15. This property is subject to screening for use to assist the homeless under the Stewart B. McKinney Homeless Assistance Act.
16. Licensee shall provide the wheel load configuration, axle loads, and total load for each type of locomotive to be taken aboard the Shipyard for evaluation of safe passage across the causeway system to Mare Island. Required data shall be provided to Code 910. If a structural analysis of the causeway system is determined necessary by the Shipyard for any locomotive, the Licensee shall have the necessary analysis accomplished by a licensed engineer.
17. Licensee shall evaluate the radii of railroad curves to be used and determine that his locomotives can traverse the curves safely and without damage to the tracks.

DW

i. All insurance required by this License shall be such form, for such periods of time, and with such insurers as the Licensee may require or approve. A certificate of insurance or a certified copy of each policy of insurance set out hereunder shall be deposited with the Licensors local representative prior to use of the premises and facilities. The Licensee agrees that not less than thirty (30) days prior to the expiration of any insurance required by this License, it will deliver to the Licensors local representative a certificate of insurance or a certified copy of each renewal policy to cover the same risks.

j. No member of or Delegate to Congress, or Resident Commissioner shall be admitted to any share or part of this License or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this License if made with a corporation for its general benefit.

k. The Licensee warrants that it has not employed any person to solicit or secure this License upon any agreement for a commission, percentage, brokerage or contingent fee. Breach of this warranty shall give the Government the right to annul this License or in its discretion to recover from the Licensee the amount of such commission, percentage, brokerage or contingent fee in addition to the consideration herein set forth. This warranty shall not apply to commissions payable by the Licensee upon contracts or sales secured or made through bona fide established commercial or selling agencies maintained by the Licensee for the purpose of securing business.

l. In connection with the performance of work under this License, the Licensee agrees not to discriminate against any employee or applicant for employment because of race, religion, color, or national origin. The aforesaid provision shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Licensee agrees to post hereafter in conspicuous places available for employees and applicants for employment, notices to be provided by the Licensor setting forth the provisions of the nondiscrimination clause. The Licensee further agrees to insert the foregoing provisions in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials.

m. All activities authorized hereunder shall be subject to such rules and regulations as regards supervision or otherwise, as may, from time to time, be prescribe by the local representative of the Licensor as designated in Item 5a. Licensee may terminate the License if such rules and regulations or other events outside its control interfere with the locomotive inspection and maintenance functions covered by this License

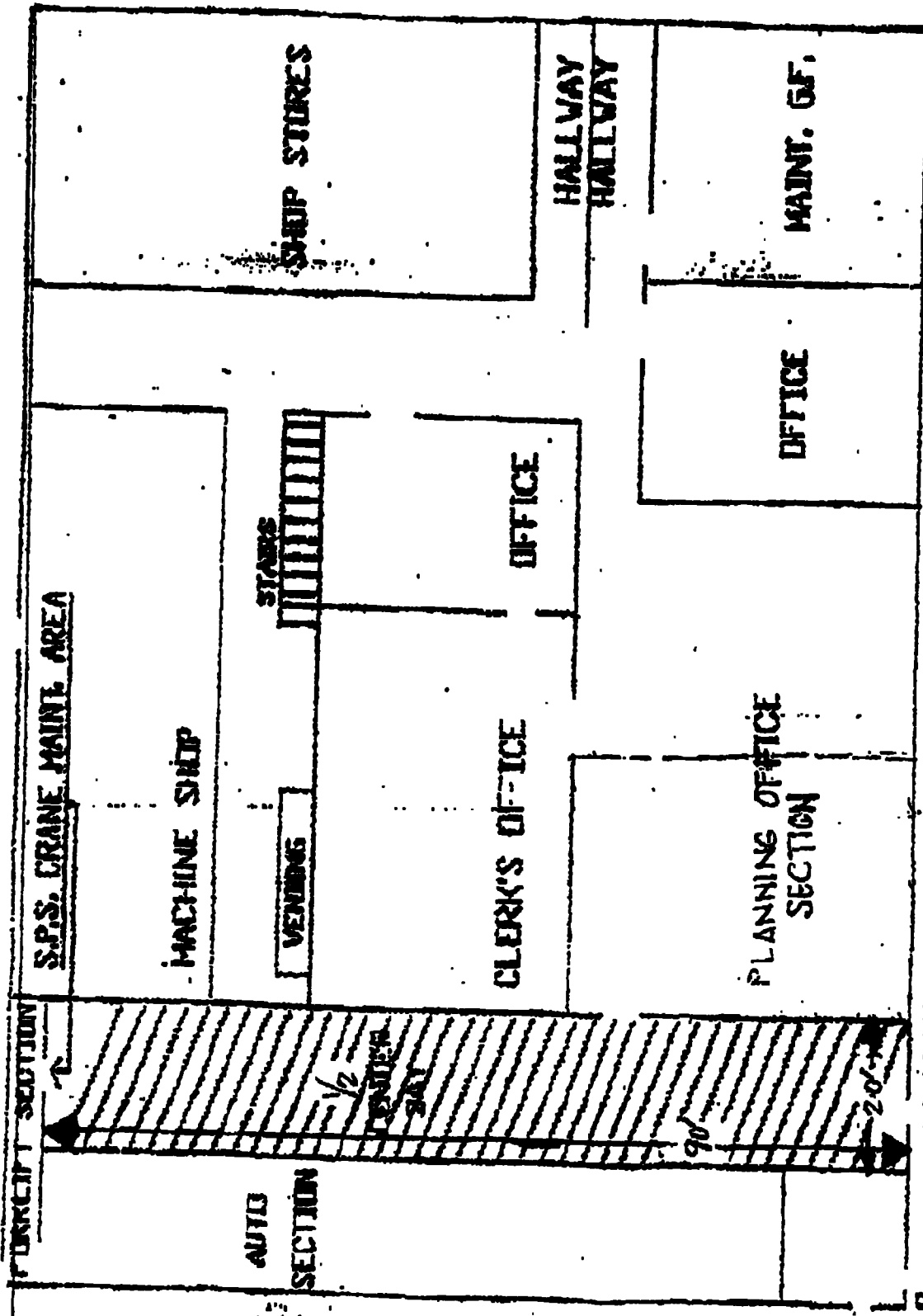
#6247494RP00P55

18. This Licensee does not constitute common carrier service by the Licensee.

19. Prior to moving material and equipment into the work area before work begins, and again after clearing material and equipment out of work area prior to departure, a walk through shall be conducted between the Licensee and Mare Island Naval Shipyard's Codes 106 and 980.

David L. Sullivan
Licensee

6/2/94
Date



BLDG. 637
EAST

NOT TO SCALE

CROSS MATCH AREA
AVAILABLE FOR USE
IN PART THE BASIS
CALIF. NORTHERN R/R

11111111 "A"

LICENSE FOR NONFEDERAL USE OF REAL PROPERTY

LICENSE NUMBER

N6247495RP00P47

THIS LICENSE TO USE THE U.S. GOVERNMENT PROPERTY HEREIN DESCRIBED IS ISSUED BY THE DEPARTMENT OF THE NAVY TO THE LICENSEE NAMED BELOW FOR THE PURPOSE HEREIN SPECIFIED UPON THE TERMS AND CONDITIONS SET FORTH BELOW AND THE GENERAL PROVISIONS ATTACHED. BY THE EXECUTION HEREOF THE LICENSEE AGREES TO COMPLY WITH ALL SUCH TERMS, CONDITIONS AND GENERAL PROVISIONS.

1. NAVAL ACTIVITY

08-8320

MARE ISLAND NAVAL SHIPYARD
VALLEJO, CA 94592

3. DESCRIPTION OF PROPERTY

2. DATES COVERED

FROM 1 JUNE 1995 TO 31 MAY 1996

Use of 1,800 square feet of space in Building 637 as shown on the floor plan marked Exhibit "A", attached hereto and made a part hereof and a portion of railroad trackage as highlighted on Exhibit "B", attached hereto and made a part hereof.

4. PURPOSE OF LICENSE

Periodic inspection and preventative maintenance of locomotives.

5. LICENSOR

UNITED STATES OF AMERICA
DEPARTMENT OF THE NAVY

5a. LOCAL REPRESENTATIVE, DEPARTMENT OF NAVY OFFICIAL

COMMANDING OFFICER, ENGINEERING FIELD ACTIVITY, WEST,
NAVAL FACILITIES ENGINEERING COMMAND, 900 COMMODORE DRIVE,
SAN BRUNO, CA 94066-5006

6. LICENSEE

CALIFORNIA NORTHERN RAILROAD CO.
1470 Railroad Avenue
SL Helena, CA 94574

6a. LOCAL REPRESENTATIVE

Mr. David L. Parkinson (707) 963-8831
(Same as Item 5)

7. CASH PAYMENT BY LICENSEE (Payable in advance)

a. AMOUNT b. FREQUENCY PAYMENTS DUE c. FIRST DUE DATE d. TO

****NONE**** Rents waived - Licensee will be responsible for the inspection and maintenance of trackage in accordance with the Code of Federal Regulations, Title 49, Part 213.

8. DEPOSIT FOR UTILITIES AND SERVICES (Payable in advance)

a. AMOUNT b. FREQUENCY PAYMENTS DUE c. FIRST DUE DATE d. TO

To be determined by Public Works Center, San Francisco Bay, Oakland, CA

9. INSURANCE REQUIRED AT EXPENSE OF LICENSEE

| TYPE | MINIMUM AMOUNT | TYPE | MINIMUM AMOUNT |
|--------------------------------|----------------|---|----------------|
| a. FIRE AND EXTENDED COVERAGE | \$ NONE | c. THIRD PARTY PERSONAL INJURY PER PERSON | \$ 1,000,000 |
| b. THIRD PARTY PROPERTY DAMAGE | \$ 1,000,000 | d. THIRD PARTY PERSONAL INJURY PER ACCIDENT | \$ 3,000,000 |

10. GENERAL PROVISIONS

See Special Provisions attached hereto and made a part hereof.

II. EXECUTION OF LICENSE

FOR

BY

DATE

HANSEL N. HARRISON, JR.
DEPARTMENT Manager, Realty Operations Branch
OF THE Real Estate Contracting Officer
NAVY

SIGNATURE

LICENSEE

DAVID L. PARKINSON
OWNER

[Signature] 6/23/95
[Signature] 6/13/95

IF LICENSEE IS A CORPORATION, CERTIFICATION OF SIGNATURE IS ATTACHED _____

COPY

10. GENERAL PROVISIONS

- a. The Licensor hereby grants to the Licensee the right to use the premises or facilities described in Item 3, together with the necessary rights of ingress and egress.
- b. This License shall be effective for the period stated in item 2 and is revocable at any time without notice at the option and discretion of the Licensor or its duly authorized representative.
- c. The use shall be limited to the purposes specified herein.
- d. This License shall be neither assignable nor transferable by the Licensee.
- e. If utilities and services are furnished the Licensee for its use of the premises the Licensee shall reimburse the Licensor for the cost thereof as determined by the Licensor in accordance with applicable statutes and regulations.

f. The Licensee, at its own cost and expense, shall protect, maintain, and keep in good order, the premises or facilities licensed hereby. At the discretion of the Licensor this obligation shall include, but not be limited to, contribution toward the expense of long-term maintenance of the premises or facilities, the necessity for which accrued during the period of licensee's use. The amount of expense to be borne by the Licensee shall be determined by prorating the total expense of the item of long-term maintenance on the basis of fractional use by the Licensee. This fractional part of the total expense shall be prorated further if the item of long-term maintenance did not accrue in its entirety during the Licensee's use. Upon a determination by the Licensor that the necessity exists for an expenditure of funds for maintenance, protection, preservation or repair, the Licensee shall pay to the Licensor its proportionate share, on demand.

g. No additions to, or alterations of, the premises or facilities shall be made without the prior consent of the Licensor. Upon revocation or surrender of this License, to the extent directed by the Licensor, the Licensee shall remove all alterations, additions, betterments and improvements made, or installed, and restore the premises or facilities to the same, or as good condition as existed on the date of entry under this License, reasonable wear and tear excepted.

h. The Licensee shall be liable for any loss of, or damage to, the premises or facilities incurred as a result of its use and shall make such restoration or repair, or monetary compensation as may be directed by the Licensor. The Licensee's liability for loss or damage to the premises resulting from risks expressly required to be insured hereunder shall not exceed the amount of insurance so required. The Licensee shall not be liable for loss of, or damage to, the premises arising from causes beyond the control of the Licensee and occasioned by a risk not in fact covered by insurance and not customarily covered by insurance in the locality in which the premises are situated. Nothing contained herein, however, shall relieve the Licensee of liability with respect to any loss or damage to the premises, not fully compensated for by insurance, which results from willful misconduct, lack of good faith, or failure to exercise due diligence, on the part of the Licensee. All insurance required of the Licensee on the premises shall be for the protection of the Licensor and the Licensee against their respective risks and liabilities in connection with the premises. Each policy of insurance against loss or damage to Government property shall name the Licensee and the United States of America, Department of the Navy, as the insured and shall contain a loss payable clause reading substantially as follows:

"Loss, if any, under this policy shall be adjusted with (Name of Licensee) and the proceeds, at the direction of the Government, shall be payable to (Name of Licensee), and proceeds not paid to (Name of Licensee) shall be payable to the Treasurer of the United States of America."

In the event that any item or part of the premises or facilities shall require repair, rebuilding or replacement resulting from loss or damage, the risk of which is assumed under this paragraph h, the Licensee shall promptly give notice thereof to the Licensor and, to the extent of its liability as provided in this paragraph, shall, upon demand, either compensate the Government for such loss or damage, or rebuild, replace or repair the item or items of the premises or facilities so lost or damaged, as the Licensor may elect. If the cost of such repair, rebuilding, or replacement exceeds the liability of the Licensee for such loss or damage, the Licensee shall effect such repair, rebuilding or replacement if required so to do by the Licensor, and such excess of cost shall be reimbursed to the Licensee by the Licensor. In the event the Licensee shall have effected any repair, rebuilding or replacement which the Licensee is required to effect pursuant to this paragraph, the Licensor shall direct payment to the Licensee of so much of the proceeds of any insurance carried by the Licensee and made available to the Government on account of loss of or damage to any item or part of the premises or facilities as may be necessary to enable the Licensee to effect such repair, rebuilding or replacement. In event the Licensee shall not have been required to effect such repair, rebuilding, or replacement, and the insurance proceeds allocable to the loss or damage which has created the need for such repair, rebuilding or replacement have been paid to the Licensee, the Licensee shall promptly refund to the Licensor the amount of such proceeds.

i. The Licensee shall indemnify and save harmless the Government, its officers, agents, servants and employees from all liability under the Federal Tort Claims Act (62 Stat. 869,982; 28 U.S.C. Sec 2671, 2680) or otherwise, for death or injury to all persons, or loss or damage to the property of all persons resulting from the use of the premises by the Licensee, and shall furnish the insurance specified in Item 9. Each policy of insurance required in Item 9 covering bodily injuries and third party property damage shall contain an endorsement reading substantially as follows:

"The insurer waives any right of subrogation against the United States of America which might arise by reason of any payment made under this policy."

j. All insurance required by this License shall be such form, for such periods of time, and with such insurers as the Licensor may require or approve. A certificate of insurance or a certified copy of each policy of insurance taken out hereunder shall be deposited with the Licensor's local representative prior to use of the premises and facilities. The Licensee agrees that not less than thirty (30) days prior to the expiration of any insurance required by this License, it will deliver to the Licensor's local representative a certificate of insurance or a certified copy of each renewal policy to cover the same risks.

[Handwritten signature]

k. No member of or Delegate to Congress, or Resident Commissioner shall be admitted to any share or part of this License or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this License if made with a corporation for its general benefit.

l. The Licensee warrants that it has not employed any person to solicit or secure this License upon any agreement for a commission, percentage, brokerage or contingent fee. Breach of this warranty shall give the Government the right to annul this License or in its discretion to recover from the Licensee the amount of such commission, percentage, brokerage or contingent fee in addition to the consideration herein set forth. This warranty shall not apply to commissions payable by the Licensee upon contracts or sales secured or made through bona fide established commercial or selling agencies maintained by the Licensee for the purpose of securing business.

m. In connection with the performance of work under this License, the Licensee agrees not to discriminate against any employee or applicant for employment because of race, religion, color, or national origin. The aforesaid provision shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Licensee agrees to post hereafter in conspicuous places available for employees and applicants for employment, notices to be provided by the Licensor setting forth the provisions of the nondiscrimination clause. The Licensee further agrees to insert the foregoing provisions in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials.

n. All activities authorized hereunder shall be subject to such rules and regulations as regards supervision or otherwise, as may, from time to time, be prescribe by the local representative of the Licensor as designated in Item 5a.

SPECIAL PROVISIONS

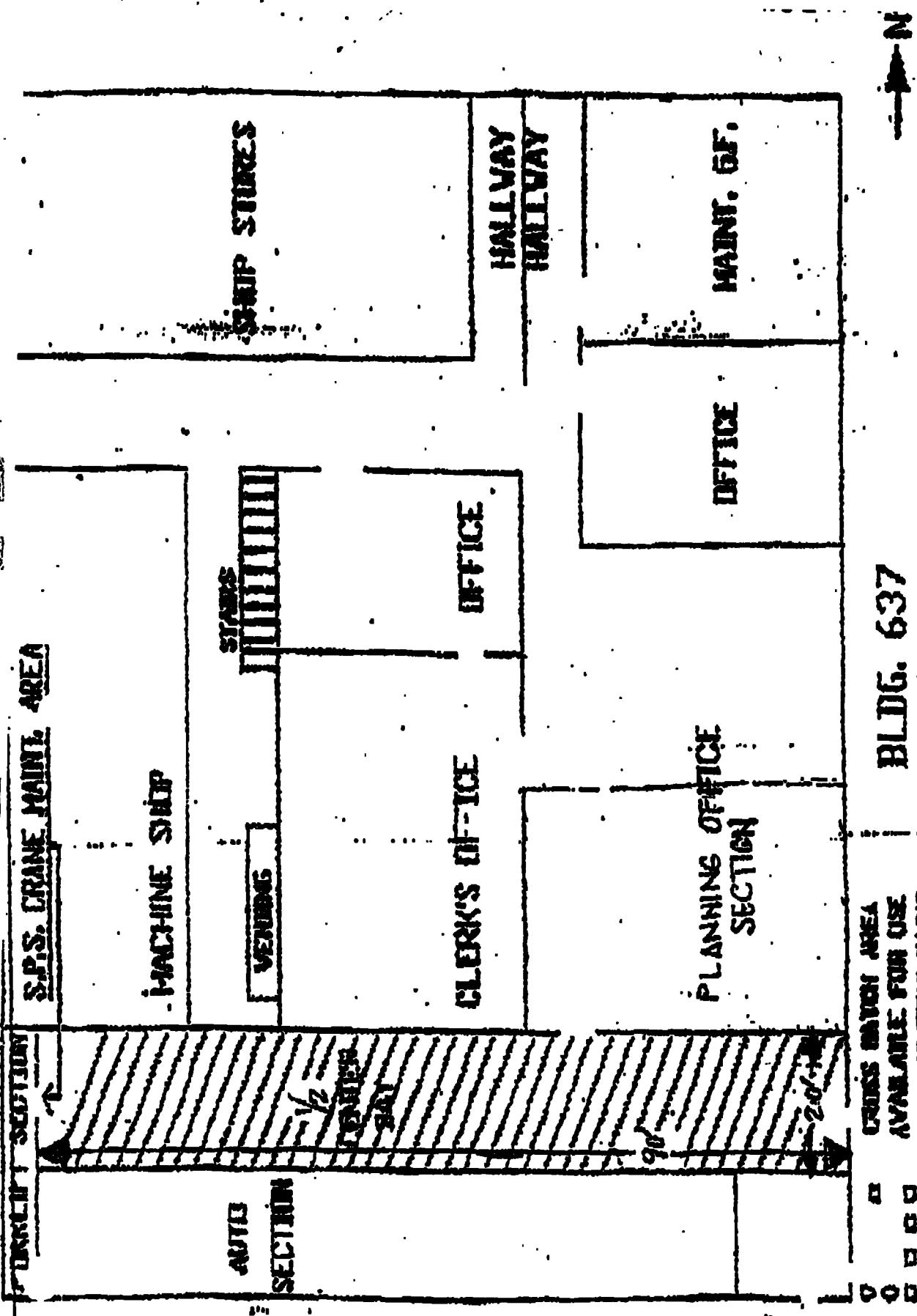
1. California Northern Railroad will transverse the trackage from the California Northern Interchange north-east of Broadway Street in the City of Vallejo to the Mare Island Main Gate west of Wilson Avenue at least once a year.
2. In the event Mare Island Naval Shipyard rail traffic ceases to utilize the trackage system, the licensee will be responsible to accomplish inspection, and maintenance of the trackage covered by this license agreement. All requirements of the Code of Federal Regulations, Title 49, Part 213, Federal Railroad Administration, Track Safety Standards for Class 2 track shall be complied to by the Licensee.
3. California Northern Railroad will provide five (5) days written notification to Mr. Jerry Wigington of Mare Island Naval Shipyard, Code 980 (707) 646-1816 or Code 910 (707) 646-1785 prior to arrival for work and departure from work for more than thirty (30) days.
4. Licensee will follow all Occupational, Safety, and Health (OSH) safety rules pertaining to railroad operations. All personnel performing work shall comply with applicable OSH regulations.
5. Licensee shall manage hazardous waste and hazardous material in accordance with all applicable federal, state, and local regulations. Licensee shall be required to obtain all applicable permits and provide all applicable reports, such as hazardous waste and hazardous material reports. All work shall be conducted in accordance with federal, state and local regulations.
6. Licensee will leave a clean and orderly work site at the end of each day.
7. California Northern Railroad personnel shall not use the overhead bridge crane.
8. The primary work site for California Northern Railroad personnel shall be the center bay of Building 637 in the area of the maintenance pits, See Exhibit "A".
9. Mare Island personnel will assist with crane service and machine shop service on a request and reimbursable basis as time allows.
10. Normal hours of operations for California Northern Railroad maintenance in Building 637 shall be 0730 to 1600 hours, Monday through Friday without prior approval by Mare Island Naval Shipyard, Code 988/910 management.
11. The work site will be for preventative maintenance and inspection only, no overhaul type work.
12. California Northern Railroad personnel will be authorized to operate their equipment on the Mare Island Naval Shipyard trackage system from the interchange onto the Shipyard, as shown on Exhibit "B", and excluding trackage inside the Controlled Industrial Area (CIA) and not shown on the map.
13. The time limit for storage of locomotives will not exceed one (1) week. Spaces will be coordinated with Mr. Jerry Wigington of Mare Island Naval Shipyard, Code 980 at (707) 646-1816 and Code 910 (707) 646-1785 for the parking of locomotives.
14. No more than two (2) locomotives (railroad vehicles) may be on board the Shipyard at any one time.
15. The Licensee shall be responsible for and effecting all restoration and environmental clean-up required as a result of work performed by the Licensee, or services provided under this license and will be in accordance with OPNAVINST 5090.1A or subsequent revision, and all applicable federal, state and local regulations. The Licensor shall be responsible for existing environmental contamination at the work site, if any, prior to the Licensee's use of same and for any environmental contamination of the work site caused by the Licensee or its agents during the term of this License. DUP
16. Licensee will at all times during the use of this license promptly observe and comply, at its sole cost and expense, with the provisions of all applicable Federal, State, and local laws, regulations and standards and pollution control and abatement. Licensee shall promptly notify the Government and supply copies of any notices, reports, correspondence, and submissions made by Licensee to any Federal, State, or local authority, or received by Licensee from said authority, concerning environmental matters or hazardous substances or hazardous waste on, about, or pertaining to the premises. Licensee shall indemnify, defend and hold harmless the Government from and against all claims, liabilities, losses, damages and costs, foreseen or unforeseen, which the Government may incur by reason or Licensee's action or non-action with regard to obligations under this paragraph, and this provision shall survive the expiration or termination of the license. Only ES required to perform preventative maintenance may be stored or used on the premises. The Licensee shall make the leased area available for inspection by the Shipyard's Environmental Inspectors upon request.
17. This property is subject to screening for use to assist homeless under the Stewart B. McKinney Homeless Assistance Act.
18. Licensee shall provide the wheel load configuration, axle loads, and total load for each type of locomotive to be taken aboard the Shipyard for evaluation of safe passage across the causeway system to Mare Island. Required data shall be provided to Code 910. If a structural analysis of the causeway system is determined necessary by the Shipyard for any locomotive, the Licensee shall have the necessary analysis accomplished by a licensed engineer.
19. Licensee shall evaluate the radii of railroad curves to be used and determine that his locomotives can traverse the curves safely and without damage to the tracks. DUP

N624495RP00P47

20. Prior to moving material and equipment into the work area before work begins, and again after clearing material and equipment out of work area prior to departure a walk through shall be conducted between the Licensee and Mare Island Naval Shipyard's Codes 106 and 980.

David C. Williams
Licensee

6/13/95
Date

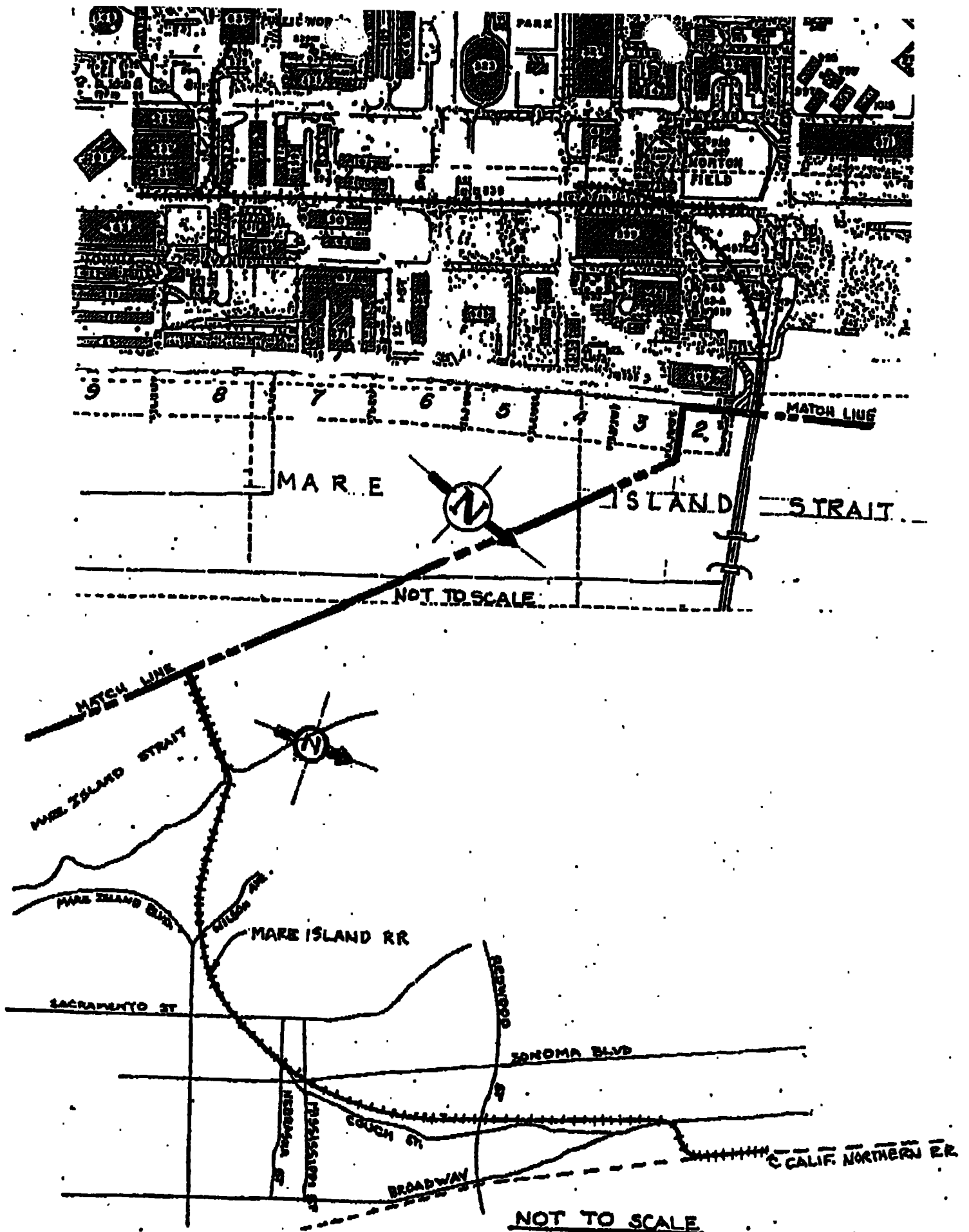


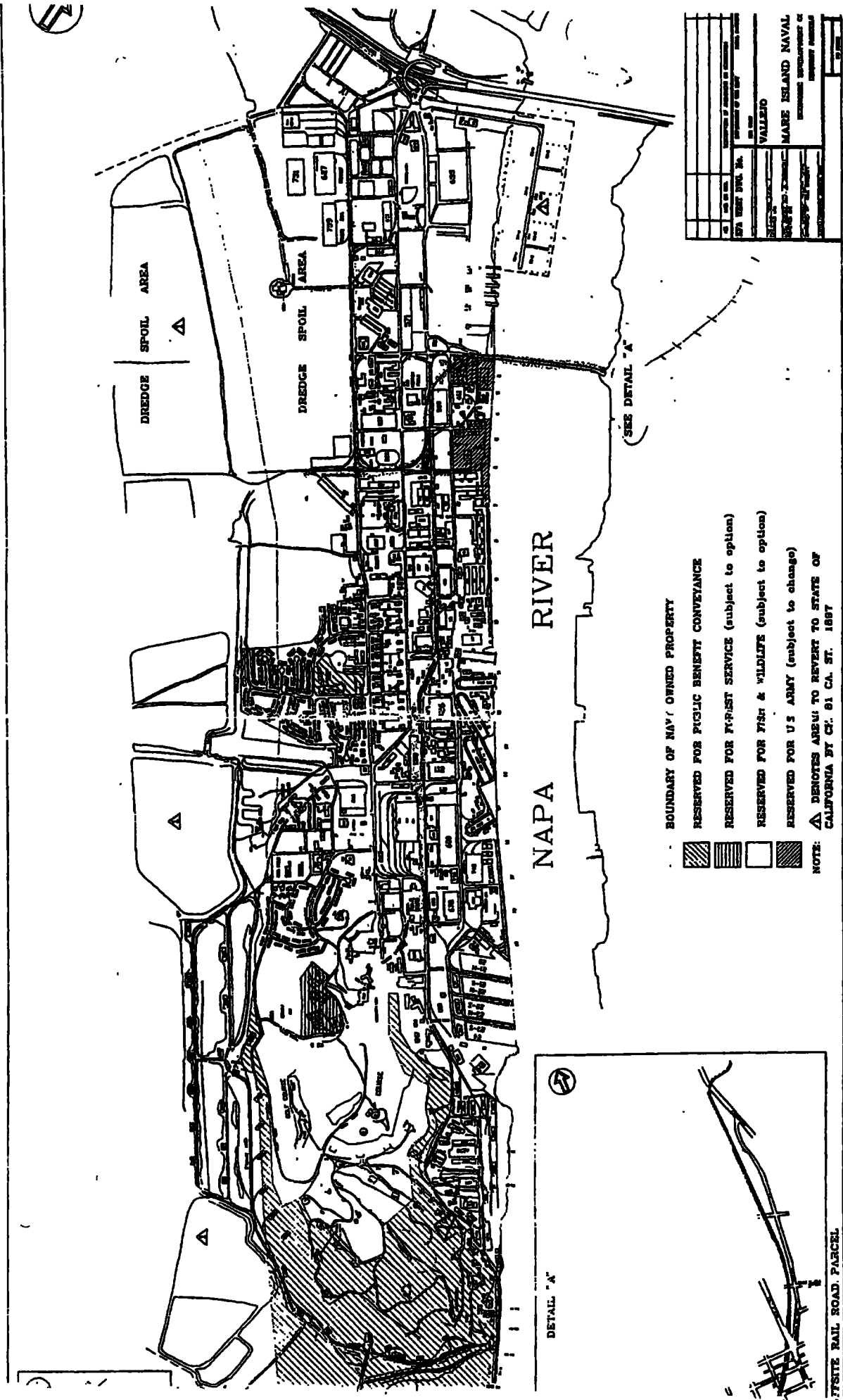
**BLDG. 637
EAST**

NOT TO SCALE

**CROSS HATCH AREA
AVAILABLE FOR USE
IN PART TIME BASIS
CALIF. NORTHERN R/R**

EXHIBIT "A"

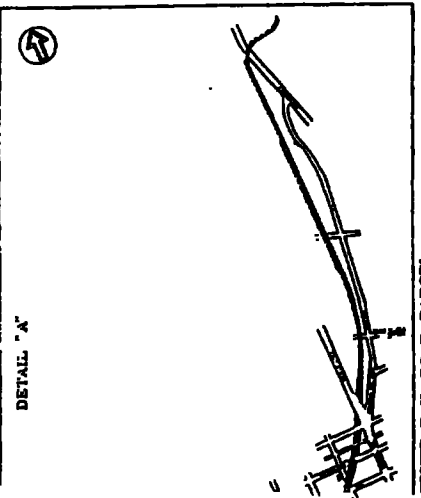




NAPA RIVER

DETAIL "A"

- BOUNDARY OF NAVY OWNED PROPERTY
- RESERVED FOR PUBLIC BENEFIT CONVEYANCE
- RESERVED FOR FISH & WILDLIFE (subject to option)
- RESERVED FOR FISH & WILDLIFE (subject to option)
- RESERVED FOR U.S. ARMY (subject to change)
- NOTE: Δ DENOTES AREA TO REVERT TO STATE OF CALIFORNIA BY CH. 81 CA. ST. 1887



| | | |
|-----------------------|------------|----------|
| DATE | BY | REVISION |
| 10/1/87 | J. VALLEJO | 1 |
| MADE ISLAND NAVAL | | |
| RESERVE SPOIL AREA | | |
| REVISIONS TO THE PLAN | | |
| DATE | | |
| BY | | |
| REVISION | | |

| | | | | |
|--|--|---|---|--------------------------------|
| 2. AMENDMENT/MODIFICATION NO. One (1) | | 3. EFFECTIVE DATE 1 Jun 96 | 4. REQUISITION/PURCHASE REQ. NO. | 5. PROJECT NO. (If applicable) |
| 6. ISSUED BY Commanding Officer Engineering Field Activity, West N. 1 Facilities Engineering Command 900 Commodore Drive San Bruno, CA 94066-2402 | | 7. ADMINISTERED BY (If other than Item 6) CODE | 8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and ZIP Code) CALIFORNIA NORTHERN RAILROAD COMPANY 1470 Railroad Avenue St. Helena, CA 94574 | |
| 9A. AMENDMENT OF SOLICITATION NO. | | 9B. DATED (SEE ITEM 11) | | |
| 10A. MODIFICATION OF CONTRACT/ORDER NO. X N6247495RP00P47 | | 10B. DATED (SEE ITEM 13) 23 Jun 95 | | |
| CODE | | FACILITY CODE | | |

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

☐ The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers ☐ is extended, ☐ is not extended.

Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods:

(a) By completing Items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted, or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required)

13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS, IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

☒ THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.

B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation data, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).

C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:

D. OTHER (Specify type of modification and authority)
X City of Vallejo ltr dtd 8 Feb 96

E. IMPORTANT: Contractor ☐ is not, ☒ is required to sign this document and return _____ 2 _____ copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCP section headings, including solicitation/contract subject matter where feasible.)

Amendment No. One (1) is issued to extend the term of the basic license contract as follows:

FROM: 31 May 1996

TO: 31 December 1996

Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

| | | | |
|---|----------------------------------|--|----------------------------|
| 15A. NAME AND TITLE OF SIGNER (Type or print) 20 J. PARKINSON, Chairman | | 16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) HANSEL N. HARRISON, JR., Manager, Rity Oper Br. Real Estate Div., Real Estate Contracting Officer | |
| 15B. CONTRACTOR/OFFEROR <i>[Signature]</i> (Signature of person authorized to sign) | 15C. DATE SIGNED March 4 1996 | 16B. UNITED STATES OF AMERICA BY <i>[Signature]</i> (Signature of Contracting Officer) | 16C. DATE SIGNED 3/7/96 |

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT

| | | | |
|--|--|--|--------------------------------|
| 2. AMENDMENT/MODIFICATION NO. TWO (2) | 3. EFFECTIVE DATE 1 JAN 1997 | 4. REQUISITION/PURCHASE REQ. NO. | 5. PROJECT NO. (IF APPLICABLE) |
| 6. ISSUED BY Commanding Officer Engineering Field Activity - West Naval Facilities Engineering Command 900 Commodore Drive, San Bruno, CA 94066-5000 | CODE 241 | 7. ADMINISTERED BY (IF OTHER THAN ITEM 6) | CODE |
| 8. NAME AND ADDRESS OF CONTRACTOR (NO., STREET, COUNTY, STATE AND ZIP CODE) CALIFORNIA NORTHERN RAILROAD COMPANY 1470 Railroad Avenue St. Helena, CA 94574 | | (✓) 9A. AMENDMENT OF SOLICITATION NO. | |
| CODE | | FACILITY CODE | |
| | | 9B. DATED (SEE ITEM 11) 10A. MODIFICATION OF CONTRACT/ORDER NO. N6247495RP00P47 10B. DATE (SEE ITEM 13) 23 JUNE 95 | |

1. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

☐ The above numbered solicitation is amended as set forth in item 14. The hour and date specified for receipt of Offers ☐ is extended, ☐ is not extended.

Offers must be acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods:

(a) By completing items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (IF REQUIRED)

13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS, IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

- ✓ A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (SPECIFY AUTHORITY) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
- B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (SUCH AS CHANGES IN PAYING OFFICE, APPROPRIATION DATE, ETC.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
- C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:
- D. OTHER (SPECIFY TYPE OF MODIFICATION AND AUTHORITY)
X CITY OF VALLEJO LTR DATED 22 NOV 1996

E. IMPORTANT: Contractor ☐ is not, X is required to sign this document and return 3 copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (ORIGINATED BY THE SECTION HEADQUARTERS, INCLUDING SOLICITATION/CONTRACT SUBJECT MATTER WHERE FEASIBLE)

Amendment No. Two (2) is issued to extend the term of the basic license contract as follows:

FROM: 31 DECEMBER 1997

TO: 31 MARCH 1997

EXCEPT AS PROVIDED HEREIN, ALL TERMS AND CONDITIONS OF THE DOCUMENT REFERENCED IN ITEM 9A OR 9B, AS HERETOFORE CHANGED, REMAINS UNCHANGED AND IN FULL FORCE AND EFFECT.

| | |
|--|--|
| NAME AND TITLE OF SIGNER (TYPE OR PRINT) David L. Parkinson CHAIRMAN CALIFORNIA NORTHERN RAILROAD | 28 DEC 1996 NAME AND TITLE OF CONTRACTING OFFICER (TYPE OR PRINT) HANSEL N. HARRISON, JR. Real Estate Contracting Officer |
| 15B. CONTRACTOR/OFFEROR DATE SIGNED David L. Parkinson 12-18-96 (SIGNATURE OF PERSON AUTHORIZED TO SIGN) | 15C. DATE SIGNED 28 DEC 1996 15D. UNITED STATES OF AMERICA H. N. Harrison, Jr. (SIGNATURE OF CONTRACTING OFFICER) |

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT

1. CONTRACT ID CODE

PAGE OF PAGES 1

| | | | |
|--|--|--|--------------------------------|
| 2. AMENDMENT/MODIFICATION NO. THREE (3) | 3. EFFECTIVE DATE 1 APR 1997 | 4. REQUISITION/PURCHASE REQ. NO. | 5. PROJECT NO. (IF APPLICABLE) |
| 6. ISSUED BY Commanding Officer Engineering Field Activity - West Naval Facilities Engineering Command 900 Commodore Drive, San Bruno, CA 94066-5006 | CODE 241RH | 7. ADMINISTERED BY (IF OTHER THAN ITEM 6) | CODE |
| 8. NAME AND ADDRESS OF CONTRACTOR (NO., STREET, COUNTY, STATE AND ZIP CODE) CALIFORNIA NORTHERN RAILROAD COMPANY 129 Klamath Court American Canyon, CA 94589 | | 9A. AMENDMENT OF SOLICITATION NO. 9B. DATED (SEE ITEM 11) 23 JUN 1995 | |
| CODE | FACILITY CODE | 10A. MODIFICATION OF CONTRACT/ORDER NO. N6247495RP00P47 10B. DATE (SEE ITEM 11) 23 JUN 1995 | |

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

☐ The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers ☐ is extended, ☐ is not extended.

Offers must be acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods:

(a) By completing Items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (IF REQUIRED)

13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS.
IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

- ☒ A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (SPECIFY AUTHORITY) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
- B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (SUCH AS CHANGES IN PAYING OFFICE, APPROPRIATION DATE, ETC.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
- C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:
- D. OTHER (SPECIFY TYPE OF MODIFICATION AND AUTHORITY)
x City of Vallejo Letter Request of 10MAR1997

E. IMPORTANT: Contractor ☐ is not, ☒ is required to sign this document and return 2 copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (ORGANIZED BY UCF SECTION HEADINGS, INCLUDING SOLICITATION/CONTRACT SUBJECT MATTER WHERE FEASIBLE)

Amendment No. Three (3) is issued to extend the term of the basic license contract as follows:

FROM: 1 APRIL 1997

TO: 30 JUNE 1997

EXCEPT AS PROVIDED HEREIN, ALL TERMS AND CONDITIONS OF THE DOCUMENT REFERENCED IN ITEM 9A OR 10A, AS HERETOFORE CHANGED, REMAINS UNCHANGED AND IN FULL FORCE AND EFFECT.

| | |
|---|---|
| 15A. NAME AND TITLE OF SIGNER (TYPE OR PRINT) THOMAS L. SCHLOSSER VP + COO CALIFORNIA NORTHERN RAILROAD CO. | 16A. NAME (Type or Print) HANSEL N. HARRISON, JR. Manager, Realty Operations Branch Real Estate Contracting Officer |
| 15B. CONTRACTOR/OFFEROR 15C. DATE SIGNED 3-21-97 (SIGNATURE OF PERSON AUTHORIZED TO SIGN) | 15C. DATE SIGNED 3/26/97 16B. UNITED STATES OF AMERICA H. N. Harrison Jr. (SIGNATURE OF CONTRACTING OFFICER) |

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT

| | | | |
|--|--|---|--------------------------------|
| 2. AMENDMENT/MODIFICATION NO SEVEN (7) | 3. EFFECTIVE DATE 1 JANUARY 1998 | 4. REQUISITION/PURCHASE REQ. NO | 5. PROJECT NO. (IF APPLICABLE) |
| 6. ISSUED BY Commanding Officer Engineering Field Activity - West Naval Facilities Engineering Command 900 Commodore Drive, San Bruno, CA 94066-5006 | CODE (Code 634) | 7. ADMINISTERED BY (IF OTHER THAN ITEM 6) | CODE |
| 8. NAME AND ADDRESS OF CONTRACTOR (NO., STREET, COUNTY, STATE AND ZIP CODE) CALIFORNIA NORTHERN RAILROAD COMPANY 129 Klamath Court American Canyon, CA 94589 | | 9A. AMENDMENT OF SOLICITATION NO. 9B. DATED (SEE ITEM 11) 10A. MODIFICATION OF CONTRACT/ORDER NO. N6247495RP00P47 10B. DATE (SEE ITEM 11) 23 JUN 1995 | |
| CODE | FACILITY CODE | | |

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

☐ The above numbered solicitation is amended as set forth in item 14. The hour and date specified for receipt of Offers ☐ is extended, ☐ is not extended

Offers must be acknowledged receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods

(a) By completing items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted, or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified

12. ACCOUNTING AND APPROPRIATION DATA (IF REQUIRED)

13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS,
IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

A. THIS CHANGE ORDER IS ISSUED PURSUANT TO (SPECIFY AUTHORITY) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.

B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (SUCH AS CHANGES IN PAYING OFFICE, APPROPRIATION DATE, ETC.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).

C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF

☒ **SECNAVINST 11011.47**

D. OTHER (SPECIFY TYPE OF MODIFICATION AND AUTHORITY)

E. IMPORTANT: Contractor ☐ is not, ☒ is required to sign this document and return 2 copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (ORGANIZED BY IRT SECTION HEADINGS, INCLUDING SOLICITATION/CONTRACT SUBJECT MATTER WHERE FEASIBLE)

Amendment No. Seven (7) is issued to **EXTEND** the term of the basic license contract as follows:

FROM: 1 JANUARY 1998

THROUGH: 31 MARCH 1998

All additional terms and Modifications to the basic license contract are to remain in force.

EXCEPT AS PROVIDED HEREIN, ALL TERMS AND CONDITIONS OF THE DOCUMENT REFERENCED IN ITEM 9A OR 10A, AS HERETOFORE CHANGED, REMAINS UNCHANGED AND IN FULL FORCE AND EFFECT

THOMAS L. SCHLOSSER, PRESIDENT

15A. NAME AND TITLE OF SIGNER (TYPE OR PRINT)

12-31-97

15B. CONTRACTOR/OFFEROR

15C. DATE SIGNED

16A. NAME AND TITLE OF CONTRACTING OFFICER (TYPE OR PRINT)

HANSEL N. HARRISON, JR.

Real Estate Contracting Officer

16B. UNITED STATES OF AMERICA

16C. DATE SIGNED

1/15/98

BY **1/15/98**
(SIGNATURE OF CONTRACTING OFFICER)

(SIGNATURE OF PERSON AUTHORIZED TO SIGN)

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT

CONTRACT ID CODE

PAGE OF PAGES 1

2. AMENDMENT/MODIFICATION NO
EIGHT (8)

3. EFFECTIVE DATE
1 APRIL 1998

4. ACQUISITION/PURCHASE REQ. NO.

5. PROJECT NO. (IF APPLICABLE)

6. ISSUED BY
Commanding Officer
Engineering Field Activity - West
Naval Facilities Engineering Command
900 Commodore Drive, San Bruno, CA 94066-5006

CODE

(Code 634)

7. ADMINISTERED BY (IF OTHER THAN ITEM 6)

CODE

1. NAME AND ADDRESS OF CONTRACTOR (INC., STREET, COUNTY, STATE AND ZIP CODE)

9A. AMENDMENT OF SOLICITATION NO.

CALIFORNIA NORTHERN RAILROAD COMPANY
129 Klamath Court
American Canyon, CA 94589

9B. DATED (SEE ITEM 11)

CODE

FACILITY CODE

10A. MODIFICATION OF CONTRACT/ORDER NO.

N6247495RFP00P47

10B. DATE (SEE ITEM 11)

23 JUN 1998

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

The above numbered solicitation is amended to set forth in Item 14. The hour and date specified for receipt of offers

is extended. is not extended.

Offers must be submitted within the time specified in the solicitation or as extended, by one of the following methods:

(a) By completing Items 8 and 13, and returning copies of the amendments; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided such telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (IF REQUIRED)

13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS, IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

A. THIS CHANGE ORDER IS ISSUED PURSUANT TO (SPECIFY AUTHORITY) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.

B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (SUCH AS CHANGES IN PAYING OFFICE, APPROPRIATION DATE, ETC.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR, O. NO. 1.

C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF.

X SECNAVINST 11011.47

D. OTHER (SPECIFY TYPE OF MODIFICATION AND AUTHORITY)

E. IMPORTANT: Contractor is not, X is required to sign this document and return 2 copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (ORGANIZED BY U.S. SECTION HEADINGS, INCLUDING SOLICITATION/CONTRACT SUBJECT MATTER WHERE FEASIBLE)

Amendment No. Eight (8) is issued to EXTEND the term of the basic license contract as follows:

FROM: 1 APRIL 1998

TO: 30 SEPTEMBER 1998

All additional terms and modifications to the basic license contract are to remain in force.

EXCEPT AS PROVIDED HEREIN, ALL TERMS AND CONDITIONS OF THE DOCUMENT REFERENCED IN ITEM 9A OR 10A, AS HERETOFORE CHANGED, REMAINS UNCHANGED AND IN FULL FORCE AND EFFECT.

THOMAS L. SCHLOSSER, PRESIDENT

15A. NAME AND TITLE OF SIGNER (TYPE OR PRINT)

16A. NAME AND TITLE OF CONTRACTING OFFICER (TYPE OR PRINT)

Dennis Drennan

Real Estate Contracting Officer

15B. CONTRACTOR OFFER NO.

15C. DATE SIGNED

4-8-98

SIGNATURE OF PERSON AUTHORIZED TO SIGN

16B. UNITED STATES OF AMERICA

16C. DATE SIGNED

4/9/98

SIGNATURE OF CONTRACTING OFFICER

Finance Docket No. 35360

February 6, 2008 Letter from California Northern

Exhibit 2

(to Verified Statement of Thomas Sheaff)



CALIFORNIA NORTHERN RAILROAD CO.

129 Klamath Court • American Canyon, CA • 94503 • Phone: 707.557.2868 • Fax: 707.557.2941

February 6, 2008

Mr. Tom Sheaff
Ms. Wanda J. Chihak
Lennar Mare Island
690 Walnut Avenue, Suite 100
Vallejo, CA 94592

(via email only)

Re: Railroad service on Mare Island

Dear Mr. Sheaff and Ms. Chihak:

CFNR Operating Company ("CFNR") has been operating over the railroad tracks on Mare Island that are owned by Lennar Mare Island ("LMI"). Recent operations have continued without a contract with LMI.

The line on Mare Island had been used to serve the military base prior to the base closing. As we understand the operation at that time, the track within the base was not served by a common carrier railroad. The Union Pacific Railroad Company ("UP") would deliver cars to the entry to the base and pick up cars from the base. Service within the base was performed solely for the base.

CFNR was hired by LMI to operate the railroad track within the former military base once it was acquired by LMI. CFNR did not change the scope of the operations. CFNR has acted as a switching carrier between the UP and the shippers and receivers on Mare Island. CFNR is not an interline settlement carrier. CFNR is paid a switching fee by UP regardless of the rate charged for the commodity and distance of the transportation. CFNR does not share in the line haul rate. As such, CFNR has not held itself out to be a common carrier for service on Mare Island. CFNR today only receives a switch fee for the service it performs on Mare Island. The UP has provided the car supply to the shippers, has quoted rates, and has generated bills of lading and waybills.



A RailAmerica Company

CALIFORNIA NORTHERN RAILROAD CO.

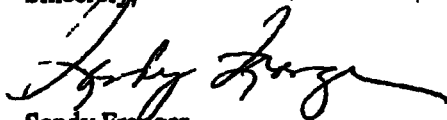
129 Klamath Court • American Canyon, CA • 94503 • Phone: 707.557.2868 • Fax: 707.557.2941

Page 2

Since the CFNR operations on Mare Island are not common carrier operations, it is CFNR's belief that it does not require authority from the Surface Transportation Board to terminate those operations. Therefore, in accordance with the notice from LMI, CFNR will cease operations in time for all cars on Mare Island to be removed by March 31, 2008.

If you have any questions, please contact me at 561-226-1722.

Sincerely,



Sandy Franger

VP- Contracts & Intercarrier Agreements

Copy to: Warren Wilson and John Miller, Union Pacific Railroad (email only)
Bob Jones, Don Seil, CFNR (email only)
Paul Lundberg, Scott Williams, RailAmerica (email only)



A RailAmerica Company

Finance Docket No. 35360

**Annotated Color Version of Map Accompanying
SFBRR's Petition for Declaratory Order and
Emergency Service Order Attached as Exhibit C
to SFBRR's Petition**

**Exhibit 3
(to Verified Statement of Thomas Sheaff)**

Sheaff V.S. – Exhibit 3
Examples of Conflicts
 between SFBRR's Proposed Access and
 the Ongoing Redevelopment of Mare Island

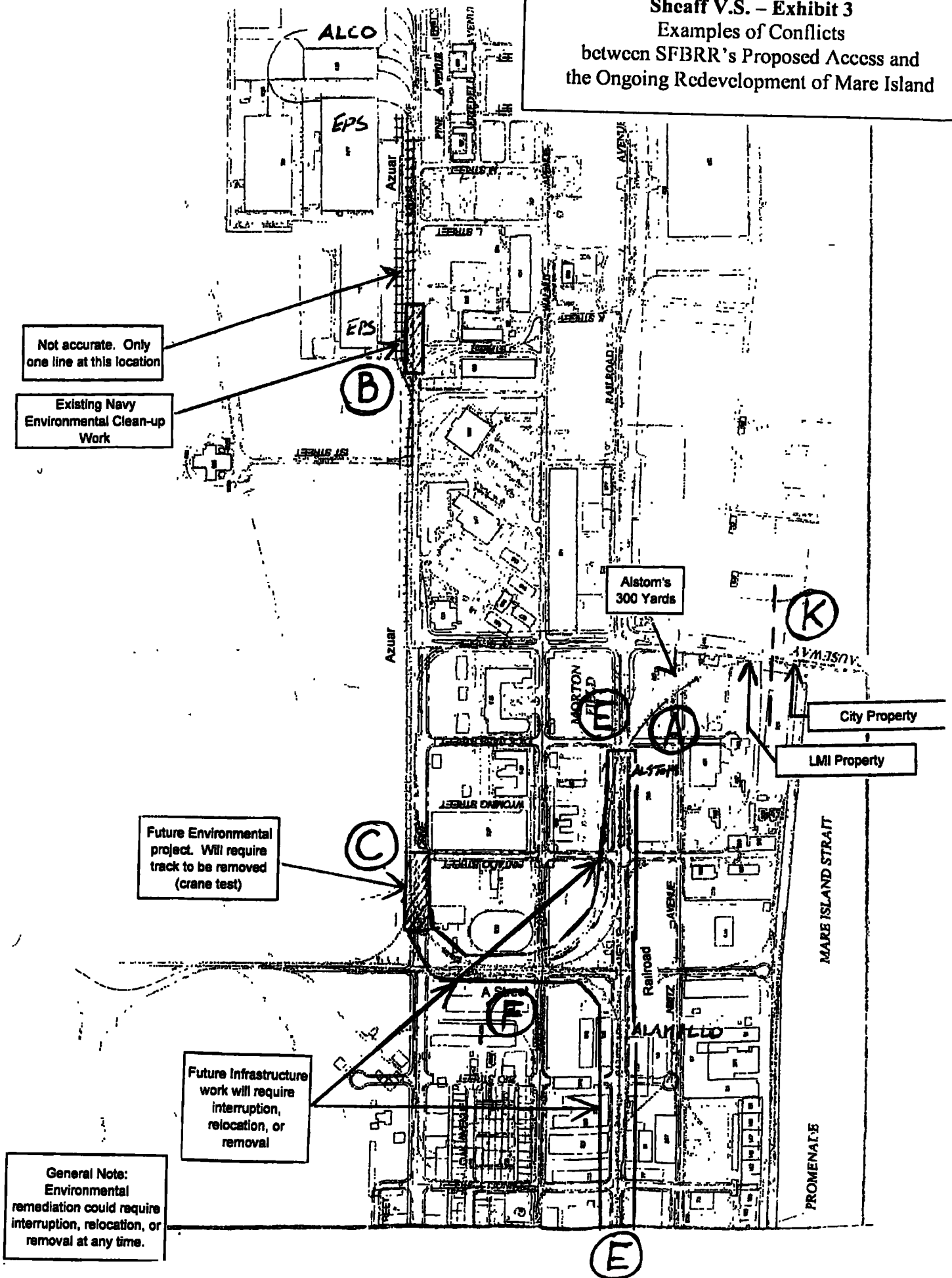


Exhibit B
Peterson V.S.

Finance Docket No. 35360

Verified Statement of Randolph Peterson

Exhibit B

VERIFIED STATEMENT
OF
RANDOLPH V. PETERSON

1. My name is Randolph V. Peterson. I am member and Manager of Tri-City Railroad Company, LLC ("TCRY"), a Class III rail carrier licensed by the Surface Transportation Board (*see* Finance Docket Nos. 33653, 33888 & 34994) with operations in Olympia and Richland, Washington. TCRY, and its predecessor Livingston Rebuild Center, Inc., have successfully conducted rail operations, including extensive switching of spur and industrial trackage, since 1998. TCRY also operates under the business name Tri-City & Olympia Railroad Company, reflecting its operation in both the Tri-City and Olympia, Washington areas. I am also the President of T&O Railroad Company, Inc. ("T&O"), a Washington corporation licensed to do business in the State of California. T&O is a contract provider of railroad switching services, drawing on the experience of the managerial and operating employees of TCRY.

2. I am submitting this statement in connection with the Petition of San Francisco Bay Railroad-Mare Island ("SFBRM") in Finance Docket No. 35360 seeking an emergency service order allowing it to conduct operations over trackage on Mare Island owned by Lennar Mare Island, LLC ("LMI") in order to serve potential rail customers located on that trackage.

3. On January 29, 2010, LMI entered into a Contract Service Agreement with T&O, doing business as "Mare Island Rail Service" (or "MIRS"), pursuant to which MIRS is obligated to provide LMI with freight car switching services on Mare Island

involving the movement of empty and loaded railcars to all tenants of LMI and other existing and future businesses on Mare Island reached via trackage owned by LMI that LMI authorizes to receive rail service, as well as contractors implementing the environmental clean-up program on the Island.

4. Since January, MIRS has taken all steps necessary to prepare to provide switching service on Mare Island, and we have been ready to begin the movement of railcars since February 22, 2010. MIRS has inspected the trackage on Mare Island and become familiar with the track conditions and operational parameters (e.g., clearances and curvature) that would affect how railcars could be moved to and from particular businesses. MIRS has leased a railcar mover capable of moving cars anywhere on the Island, and placed it in service on Mare Island. (MIRS is also capable of moving cars between the Island and Flosden Acres via locomotive) MIRS has also developed a plan for switching each of the existing businesses that are potential rail customers as mentioned in SFBRR's Petition (at pages 17-18 and 26) – including Earthquake Protection Systems, XKT Engineering, Alamillo Rebar, Alco Iron & Metal, Jeffco/ABC, Cooper Crane, and CS Marine. MIRS could also serve Alstom if SFBRR were no longer serving that company directly.

5. MIRS is prepared to move railcars to and from each of these businesses (and others, if any desire to receive railcars) as soon as (a) SFBRR is willing and able to deliver railcars to a connection with Mare Island trackage on the west end of the Mare Island Causeway, and (b), in the case of Earthquake Protection Systems and Alco Iron & Metal, as soon as the U.S. Navy completes its ongoing environmental remediation project and restores the trackage needed to reach these businesses, which currently is no longer

in place. (The location of the missing trackage is marked on the map attached to Thomas Sheaff's verified statement.) If SFBRR is willing to cooperate in the placement and pick-up of cars, MIRS would be able to provide efficient and effective rail service on Mare Island.

6. On February 18, 2010, MIRS asked SFBRR to provide information concerning its tariff rate for delivering cars to a point of connection with SFBRR on Mare Island, as well as information about SFBRR's demurrage tariff and SFBRR's service schedule. MIRS made clear in that correspondence that it was writing because "LMI has tenants on Mare Island that desire to have rail service available as an option" and that MIRS would be picking up railcars from SFBRR "on LMI's private industry track, just west of the Mare Island Causeway," and delivering cars to SFBRR at the same location. (This correspondence is Exhibit O to SFBRR's Petition.) SFBRR has never responded to MIRS, or taken any other steps to communicate about delivering to MIRS railcars destined for LMI's tenants or other businesses on Mare Island.

7. MIRS's agreement with LMI covers only the rail trackage on Mare Island. It does not authorize MIRS to operate on trackage owned by the City of Vallejo between the Mare Island Causeway and Flosden Acres, where there is a connection with the California Northern Railroad ("CFNR"). MIRS has made clear to LMI and the City of Vallejo that MIRS would be able to operate to Flosden Acres if an appropriate access agreement could be reached with the City of Vallejo, and assuming the track is brought into compliance with applicable Federal Railroad Administration ("FRA") requirements. MIRS anticipates that CFNR would be prepared to deliver cars to it at Flosden Acres, since it has been willing to deliver cars to SFBRR at that location.

8. MIRS has learned that the grade crossing safety signal systems protecting nine road crossings on the City-owned segment between the Causeway and Flosden Acres are not now in service and have not been in service for a number of years. MIRS contacted the FRA's Sacramento office and confirmed that a full inspection of those signals, and all required tests, must be successfully completed before operations could legally resume on this segment, unless a FRA "safety committee" waiver were granted. MIRS was also advised by the FRA that SFBRR has neither requested nor received any waiver from the FRA allowing operations on the subject track segment. It therefore appears that SFBRR has been delivering railcars to Alstom without an FRA "safety committee" waiver. The FRA advised that it would be conducting a meeting with SFBRR, which could have implications for the near-term ability to operate the line segment between Flosden and Mare Island.

9. MIRS does not regard the switching services that it would provide under its Contract Services Agreement with LMI to be common carrier operations of a rail line. MIRS's services will be performed solely on behalf of LMI. MIRS will not be holding itself out as able to provide common carrier service, and it is understood by MIRS (and all potential customers will be so advised) that operations on Mare Island are subject to interruption as a result of ongoing redevelopment, environmental clean-up and related work on the Island. MIRS understands, however, that SFBRR is contending before the Board that the trackage on Mare Island *must* be operated by a rail common carrier authorized by the Board. If the Board determines that to be the case, MIRS is prepared to obtain the necessary Board authority and conduct such operations, assuming of course that appropriate operating agreements can be reached with LMI and any other necessary

parties. As noted above, MIRS's affiliate, TCRY, is licensed as a Class III rail common carrier with respect to two separate rail lines in the State of Washington, and thus understands the responsibilities associated with becoming a rail common carrier.

VERIFICATION

State of Washington)
)
) SS
)
County of Benton)

Randolph V. Peterson, being duly sworn, deposes and says that he has read the foregoing statement, knows the facts asserted therein are true and that the same are true as stated.

Randolph Peterson
Randolph V. Peterson

Subscribed and sworn to before me this 18 day of March, 2010.

Lisa C. Anderson
Notary Public

Notary Public of Washington

My Commission expires: 8/01/2010

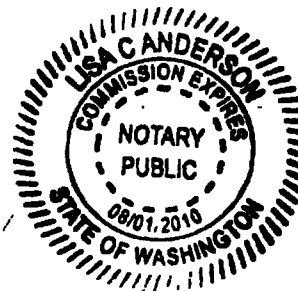


Exhibit C
Franger V.S.

Finance Docket No. 35360

Verified Statement of Sandy Franger

Exhibit C

VERIFIED STATEMENT

OF

SANDY FRANGER

1. My name is Sandy Franger. I am Vice President – Contracts and Joint Facilities for RailAmerica Inc., and Vice President of its subsidiary company, the California Northern Railroad Company (“California Northern”).

2. I am submitting this statement in connection with the Petition filed by San Francisco Bay Railroad-Mare Island (“SFBRR”) in Finance Docket No. 35360.

3. I understand that SFBRR’s Petition addresses SFBRR’s rights and obligations with respect to rail trackage between a point known as Flosden Acres, in Vallejo, California, and Mare Island (which for convenience I refer to as the Mare Island Trackage). Flosden Acres is a point on California Northern’s Vallejo Branch, which California Northern leases from Union Pacific Railroad Company (formerly Southern Pacific Transportation Company).

4. SFBRR’s statements in its Petition that SFBRR acquired “rights ... from CFNR” relating to the Mare Island Trackage (Pet., p. 1); that SFBRR has the authority to provide service on that trackage “as successor in interest to the CFNR” (*id.*, p. 13); and that SFBRR was “designated” by California Northern to provide service on the Mare Island trackage (*id.*, p. 29) are not correct. SFBRR is not in any sense a “successor” to California Northern. It acquired no assets, property rights, or contractual rights from California Northern relating to the Mare Island Trackage, and California Northern did not designate SFBRR or anyone else to provide rail service on that trackage.

5. In 2009, David Gavrich approached California Northern about the possibility of his providing rail service to Alstom, a business located on Mare Island, which would involve his moving cars on the Mare Island Trackage that California Northern would deliver to a rail siding at Flosden Acres. California Northern would be willing to interchange railcars with SFBRR-MI railroad at Flosden Acres – just as California Northern would be willing to interchange railcars with any other qualified operator of that trackage – but California Northern did not convey to SFBRR any rights or authority to provide service on the Mare Island Trackage, or “designate” SFBRR (which at the time did not even exist) as the operator of the trackage.

6. The only contractual or other relationships between California Northern and SFBRR are two-fold: (a) California Northern allowed SFBRR to use a California Northern locomotive for a brief period of time in 2009 when SFBRR did not have its own locomotive in the vicinity of Flosden Acres, and (b) California Northern entered a standard interchange agreement with SFBRR covering rail traffic that might be interchanged with it at Flosden Acres.

7. California Northern would be willing to interchange railcars with any qualified operator of the trackage connecting Flosden Acres with Mare Island, so long as California Northern and such qualified operator could work out an appropriate interchange agreement or other arrangement addressing responsibility for cars that California Northern delivers at Flosden Acres.

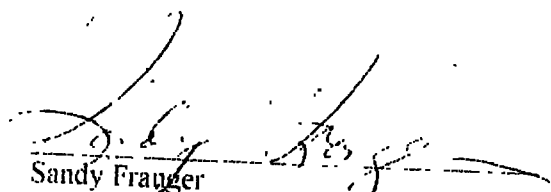
8. California Northern has never obtained or held Board authority pertaining to the Mare Island Trackage. In particular, the Verified Notice of Exemption filed by CFNR Operating Company (one of California Northern’s predecessors), which SFBRR

attaches to its Petition as Exhibit D, listed the Vallejo Branch that California Northern leases from Union Pacific, but *did not* list any of the Mare Island Trackage as covered by CFNR's operating exemption. California Northern's lease with Union Pacific does not include the trackage between Flosden Acres and Mare Island.

VERIFICATION

State of Texas)
)
) SS
)
County of Bexar)

Sandy Franger, being duly sworn, deposes and says that she has read the foregoing statement, knows the facts asserted therein are true and that the same are true as stated.


Sandy Franger

Subscribed and sworn to before me this, 17th day of March, 2010


Notary Public

Notary Public of Bexar County Texas
My Commission expires: 8-22-12

